European Social Charter | Charte sociale européenne

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COMITÉ EUROPÉEN DES DROITS SOCIAUX

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FIRST REPORT
ON THE NON-ACCEPTED PROVISIONS OF
THE EUROPEAN SOCIAL CHARTER

DENMARK

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1. Overview of the adjusted procedure on the non-accepted provisions of the European Social Charter

The European Social Charter is based on a ratification system, which enables States Parties, subject to certain minimum requirements, to choose the provisions they are willing to accept as binding international legal obligations. This system is provided for by Article A of the revised European Social Charter (Article 20 of the 1961 Charter) and it allows States, at any time subsequent to ratification of the treaty, to notify the Secretary General of their acceptance of additional articles or paragraphs.

It is in the spirit of the Charter for States Parties to progressively increase their commitments, tending towards acceptance of additional and eventually all provisions of the Charter where possible, as opposed to an à la carte stagnancy.[1]

The procedure on examination of reports on non-accepted provisions is provided for by Article 22 of the European Social Charter of 1961 (ETS No. 35). According to this provision, the States Parties shall send to the Secretary General, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of Part II of the Charter which they did not accept at the time of their ratification or by subsequent notification. The Committee of Ministers shall determine from time to time in respect of which provisions such reports shall be requested and the form of the reports to be provided.

In the early years, the Committee of Ministers would occasionally launch an exercise on a particular provision, asking all states that had not accepted it to report on the situation. In 2002, following the Decision of the Committee of Ministers[2], it shifted to periodic reporting every five years on nonaccepted provisions of the revised Charter (RESC).

Noting that the exercise was not yielding the expected results, considering the objective of strengthening the impact of the European Social Charter, the Committee of Ministers decided in December 2019 to invite "the European Committee of Social Rights (hereafter the ECSR or the Committee) to make full use of the opportunities for dialogue offered by Article 22 and to include in this exercise a dialogue with the member States that are not yet Party to the revised Charter, with a view to encouraging them to ratify it".[3]

On this basis, in September 2022, the ECSR adopted a decision to henceforth implement the procedure on non-accepted provisions in respect of all State Parties to either Charter, in a reinforced manner. The procedure now provides for submission of written information by States Parties in accordance with a pre-established calendar, and additional bilateral meetings when it is deemed to represent an added value. The written information, submitted by the States Parties shall be made public upon its reception, and the national and international social partners, non-governmental organisations, national human rights institutions, equality bodies and other stakeholders are given the possibility to provide comments within three months after receipt of the written information.

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[1] The opening paragraph of Part I reads "The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised", followed by the heading of all rights contemplated by the European Social Charter. Part III, Article A, provides that "each of the Parties undertakes [...] to consider Part I of the Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part", followed by the rules on the choices available as regards provisions that Parties can declared to be bound by and which determine the modalities of monitoring under Part IV of the Charter. (See CM(2022)196-final).

[2] Committee of Ministers Decision of 11 December 2002.

[3] Committee of Ministers Decision of 11 December 2019.

In this context, the ECSR took the opportunity to underline that the objective of improving the implementation of social rights as a whole also entails a progressive strengthening of States Parties' commitments under the Charter. As implied by the Committee of Ministers in its decision of 15 March 2023[4], non-acceptance of provisions should be an exception, not the rule. Moreover, the binding scope of the accepted provisions relates to the modalities and extent of monitoring under the Charter, which does not detract from their nature as human rights. Consistent with the tenet that social rights are human rights and therefore universal, indivisible and interdependent, the ECSR emphasised that the ultimate goal is for States Parties to commit to all the provisions of the Charter and that not accepting certain provisions should on no account be seen as a permanent state of affairs.

2. The situation of Denmark in the context of the non-accepted provisions of the European Social Charter

Denmark ratified the 1961 European Social Charter on 3 March 1965, accepting 45 out of 72 paragraphs. Denmark ratified the Additional Protocol of 1988 extending the social and economic rights of the 1961 Charter, accepting the four Articles. It did not sign the Amending Protocol of 1991 reforming the supervisory mechanism. Denmark has signed but not yet ratified the revised Charter and the Additional Protocol providing for a system of collective complaints.

Thus far, the following 27 provisions of the 1961 Charter have not been accepted by Denmark: Articles 2§§1 and 4, 4§§4 and 5, 7§§1 to 10, 8§§2 to 4 and 19§§1 to 10.

With reference to the revised Charter, which is a more recent treaty and offers an improved protection of social rights, Denmark would benefit from not further delaying its ratification and taking into account the enhanced protection offered by the updated and new articles as follows: Article 2§§3 and 4 (modernised in RESC), Article 2§§6 and 7 (new in RESC), Article 3§§1 and 4 (new in RESC), Article 7§§2, 4 and 7 (modernised in RESC), Article 8 (modernised in RESC and 8§4a becomes 8§4, respective 8§4b becomes 8§5), Article 10§4 (new in RESC and §4 of the 1961 Charter becomes §5), Article 11§3 (modernised in RESC), Article 12§2 (modernised in RESC), Article 15§§1 and 2 (modernised in RESC), Article 15§3 (new in RESC), Article 17§§1 and2 (modernised in RESC), Article 19§§11 and- 12 (new in RESC) and Articles 24 to 31 (new in RESC).

Under the revised Charter, each Party undertakes:

- to consider Part I of the Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;
- to consider itself bound by at least six of the following nine Articles of Part II of this Charter: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20;
- to consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs.

Considering the four Articles of the 1988 Additional Protocol, Denmark is currently bound by seven of the nine hard-core Articles of Part II of the revised Charter (cf. Article A of the revised Charter): Articles 1, 5, 6, 12, 13, 16 and 20. In total, under the 1961 Charter and the 1988

[4] Committee of Minister Decision of 15 March 2023 (CM(2022)196-final)

Additional Protocol, Denmark is bound by what corresponds to 14 full articles and 49 numbered paragraphs of Part II of the revised Charter.

Denmark's ratification of the revised Charter would therefore require that it consider itself bound by at least two additional full articles of the revised Charter or 14 additional numbered paragraphs on top of those already accepted under the 1961 Charter.

The ratification of the revised Charter by the States that are still bound by the 1961 Charter is of particular importance for the Council of Europe in order to demonstrate its unity in its mission to defend social rights and to reduce the treaty law complexity resulting from the existence of two social charters.

Current examination

This first examination of the non-accepted provisions is based on the adjusted procedure on non-accepted provisions. In terms of this procedure, Denmark was invited to submit written information, which was registered in August 2023 and subsequently published on the CoE website. In addition, at its 331st session (December 2022), the Committee decided to convene a meeting with the Danish authorities and the social partners to discuss the situation in law and practice in respect of the non-accepted provisions. The meeting was held on 9-10 November 2023, in Copenhagen, at the Ministry of Employment (the programme of the meeting is set out in Appendix I).

The ECSR delegation consisted of Karin Møhl Larsen and Miriam Kullmann, members of the Committee and Giuseppe Palmisano, former President of the ECSR. The Secretariat was represented by Henrik Kristensen, Deputy Executive Secretary of the ECSR, Loreta Vioiu, Programme Manager and Catherine Gheribi, senior Assistant. They raised certain aspects of the case law with regard to the non-accepted provisions, the collective complaints procedure and the latest reform of the Charter system. The Danish authorities presented the situation in law and in practice relating to the non-accepted provisions. The ECSR delegation was hosted by Ms Vibe Westh, Deputy Permanent Secretary at the Ministry of Employment. The meeting was moderated by Ms Kirstine Wichmand, Legal Adviser at the Ministry of Employment, and representative of the Danish Government in the Governmental Committee of the European Social Charter and the European Code of Social Security. Mr Carsten Sander, Head of Division and Mr Torben Lorentzen, Chief Adviser at the Ministry of Employment were part of the Danish delegation.

The ECSR visit to Denmark also included a bilateral meeting with Mr Jonas Bering Liisberg, Director of European Affairs and the Arctic at the Ministry of Foreign Affairs, as well as meetings with the Danish Parliamentary delegation to PACE, social partners, civil society organisations and a meeting with Ms Louise Holck, Executive Director of the Danish Institute for Human Rights, and her staff.

In the written information, the Government indicated that "the report provides information on the law and practice in Denmark, taking due note of existing international standards and EU legislation. In the process of drawing up this report, Danish authorities[5] have relied on the appropriate case law of the ECSR in the assessment of the provisions. The content of the

[5] The Danish Ministry of Employment (competent authority as regards the European Social Charter), Ministry of Foreign Affairs, Ministry of Justice, Ministry of Industry, Trade and Finance, Ministry of Social Affairs and Housing, Ministry of Children and Education, Ministry of Immigration and Integration, Ministry of Taxation, Ministry of Transport, Ministry of Higher Education and Science, Ministry of Digitalisation and Gender Equality, Ministry of Senior Citizens, the Danish Agency for Labour Market and Recruitment, the Danish Working Environment Authority (WEA), the Danish Maritime Authority (DMA), and the Danish Financial Supervisory Authority (DFSA).

report should be regarded as a preliminary technical assessment for further dialogue and examination, in particular with the ECSR".

Furthermore, although the Government of Denmark has not ratified the revised Charter, it provided information on "Articles and provisions which differ from the 1961 European Social Charter, Articles on which Denmark has reservations and new Articles". Articles identical to those in the 1961 Charter and which were ratified by Denmark in 1965, were left out of this section of Denmark's report.

The Danish Government informed of its position regarding the possible ratification of the 1995 Additional Protocol providing for a system of collective complaints. According to the Government,

> "Denmark has previously hesitated to ratify the Additional Protocol, as the procedure weakens the role of the Governmental Committee. In the Governmental Committee, the national representative can clarify and elaborate the legal aspects related to the country-specific case. The members of the Governmental Committee are familiar with the context and background of the cases, both from the ongoing work in the committee and from the processing of current cases and conclusions, and can therefore take into account societal and other relevant considerations in their assessment. However, in the collective complaints system, the legal assessment is separated from the political assessment. Furthermore, the possibility for the Committee of Ministers to challenge the legal assessment of the ECSR is limited.
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> Denmark is also reluctant to participate in this procedure due to the increased workload involved. The collective complaints procedure is an add-on to the existing procedure which, *ceteris paribus*, implies more work in terms of the ongoing processing of complaints and the additional follow-up report after a recommendation. We are aware that Member States that accept collective complaints submit statutory reports every four years instead of every second year, but, nonetheless, the procedure imposes additional administrative burdens on the Member State.
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> It is also worth mentioning that the social partners are invited under Article 27, paragraph 2, to be represented at the meetings of the Governmental Committee. Denmark is sceptical about the added value of the system, as it already has a well-organised and comprehensive organisational structure".

The present examination covers the following non-accepted provisions of the 1961 Charter:

- Article 2§§1 and 4 – The right to just conditions of work
- Article 4§§4 and 5 – The right to a fair remuneration
- Article 7§§1 to 10 – The right of children and young persons to protection
- Article 8§§2 to 4 – The right of employed women to protection
- Article 19§§1 to 10 – The right of migrant workers and their families to protection and assistance

Additionally, the examination covers the following non-accepted provisions of the revised Charter:

- Article 2§§3, 4, 6 and 7 – The right to just conditions of work
- Article 3§§1 and 4 – The right to safe and healthy working conditions
- Article 4§5 – The right to a fair remuneration
- Article 7§§2 and 4 – The right of children and young persons to protection
- Article 8§§1 to 5 – The right of employed women to protection of maternity
- Article 10§4 – The right to vocational training

- Article 11§3 – The right to protection of health
- Article 12§2 – The right to social security
- Article 15§§1 to 3 – The right of persons with disabilities to independence, social integration and participation in the life of the community
- Article 17§§1 and 2 – The right of children and young persons to social, legal and economic protection
- Article 19§§11 and 12 – The right of migrant workers and their families to protection and assistance
- Article 24 – The right to protection in cases of termination of employment
- Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer
- Article 26§§1 and 2 – The right to dignity at work
- Article 27§§1 to 3 – The right of workers with family responsibilities to equal opportunities and equal treatment
- Article 28 – The right of workers' representatives to protection in the undertaking and facilities to be accorded to them
- Article 29 – The right to information and consultation in collective redundancy procedures
- Article 30 – The right to protection against poverty and social exclusion
- Article 31§§1 to 3 – The right to housing

Having examined the written information submitted by Denmark and the results of the subsequent meetings with the authorities, social partners and civil society in Copenhagen on 9-10 November 2023, the ECSR considers that there appear to be no obstacles to the immediate acceptance of Article 7§§6, 7 and 8, and Article 19§8, and no major obstacles to the acceptance of Article 2§§1 and 4, Article 7§2, and Article 8§3 of the 1961 European Social Charter.

As regards Article 4§§4 and 5, Article 7§§1 and 10, Article 8§4, Article 19§§1, 2, 3, 4, 5, 6, 7, 9 and 10, the Committee considers that further clarification of the law and practice is necessary in order to assess the situation.

Finally, the Committee considers that there are some obstacles to the acceptance by Denmark of Article 7§§3, 4, 5 and 9 and Article 8§2 of the Charter.

With regard to the revised European Social Charter, upon examination of the submitted written information by Denmark, the ECSR considers that there are no obstacles to the immediate acceptance of Article 2§§3 and 6, Article 10§4, Article 11§3, Article 12§2, Article 19§11, Article 26§§1 and 2, Article 27§§1, 2 and 3, Article 29 and Article E. The ECSR considers that there appear to be no major obstacles to the acceptance of Article 3§4, Article 7§2, Article 8§3, Article 15§§1 and 2, Article 25 and Article 31§§1, 2 and 3 of the revised Charter.

As regards Article 2§7, Article 3§1, Article 4§5, Article 8§§4 and 5, Article 15§3, Article 17 §1 and 2, Article 19§12, Article 24, Article 28 and Article 30 of the revised Charter, the Committee considers that further clarification of the situation in law and practice is necessary in order to assess whether there are obstacles to the acceptance of these provisions.

The ECSR points out that acceptance of the provisions of the Charter, especially those considered most difficult to implement, does not always have to be based on the full legal conformity of the situation at the time of acceptance, but that acceptance may be the subject of a political decision to signal the State Party’s desire to implement the rights in question, given their crucial importance.

Furthermore, the Committee draws attention to the fact that, in the revised Charter, Article 8 has undergone significant change in terms of the scope of protection, with a focus on pregnancy and maternity. The purpose of this change is to remove any unintentional barriers to women's participation in the labour market, and therefore encourages the Government to accept the revised Charter. The Committee also noted that Denmark is bound by the EU law related to this Article, including EC Directive 92/85 (Pregnant Workers Directive) and the Directive (EU) 2019/1158 on work-life balance for parents and carers. The Committee encourages Denmark to consider accepting the revised Charter including Article 8§§4 and 5 without delay, as this would be in line with societal developments and the contemporary view of women's participation in the labour market.

In view of the above, the Committee considers that Denmark could proceed to the ratification of the revised Charter and, given that Denmark is already bound by other EU and international obligations, there is no reason why Denmark should not accept several of the new provisions of the revised Charter.

The Committee also invites Denmark to accept the Collective Complaints Procedure, in order to increase the effectiveness, speed and impact of the implementation of the Charter and strengthen the role of the social partners and non-governmental organisations, as well as make a declaration enabling national NGOs to submit collective complaints, as a step towards meeting the strong interest of domestic NGOs in the continuous strengthening of social standards at the national level. The Committee underlined that acceptance of the Collective Complaints Procedure is not conditional on ratification of the revised Charter.

The Committee remains at the disposal of the Government for enhanced dialogue[6] on the provisions of the Charter and the relevant case law, and invites Denmark to ratify the revised Charter and to undertake further commitments under the Charter as soon as possible so as to consolidate the paramount role of the Charter in achieving social and economic progress and, ultimately, greater unity among the Council of Europe's Member States by guaranteeing and promoting common social human rights standards.

A table showing the provisions of the 1961 Charter accepted by Denmark appears in Appendix II.

The next examination of the provisions not yet accepted by Denmark will take place in 2028.

[6] In the light of the latest reform of the Charter system, States Parties to the Charter may benefit from enhanced dialogue with the Charter's monitoring bodies – in a constructive and cooperative spirit - as a tool to reach a common understanding of problematic issues that may permit to identify possible solutions to such issues which are suitable for and acceptable to the State Party concerned. Enhanced dialogue may also serve as a means of enabling technical assistance. (CM(2022)114 final - Implementation of the Report on Improving the European Social Charter system)

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS OF THE 1961 EUROPEAN SOCIAL CHARTER

Article 2§1 – *The right to just conditions of work*
With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

Situation in Denmark

The Government indicates that the regulation of working hours in Denmark is a core area left to the social partners. Therefore, daily and weekly working hours are primarily regulated by collective agreements. In most areas, the standard working week is 37 hours, regardless of productivity and other factors.

As stated by the Government, the Act on Working Time imposes some legal requirements in order to fulfil the EU-directive on working time. The act applies to areas not covered by collective agreements:

- A break during a working day exceeding 6 hours. The length of the break depends on the purpose of the break, e.g. whether it is a break to take a meal.
- A maximum average working week of 48 hours, including overtime.
- An employee on night shift must not work more than an average of 8 hours in a 24-hour period.

In the working environment legislation, there are legal requirements for rest periods:

- A daily rest period of at least 11 consecutive hours.
- One 24-hour rest period per week, which must immediately follow a daily rest period. No more than six 24-hour periods between two 24-hour rest periods are allowed.

ECSR interpretation (DIGEST)

Article 2§1 guarantees workers the right to reasonable limits on daily and weekly working hours, including overtime.[7] The aim is to protect worker's safety and health.[8] The Committee examines the situation of workers "on call" or working discontinuous hours under this provision.[9] Adequate protection must also be afforded to part-time workers in terms of this Article.[10]

A reasonable period of work, including overtime, must be guaranteed through legislation, regulations, collective agreements or any other binding means.[11] In order to ensure that the limits are respected in practice, an appropriate authority must supervise whether the limits are being respected.[12] These limits should apply to all categories of workers and can only be exceeded under exceptional circumstances (i.e. natural disasters, situations of *force majeure*).[13]

[7] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[8] Confédération Générale du Travail (CGT) v. France, Complaint No. 22/2003, decision on the merits of 7 December 2004, §34
[9] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[10] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[11] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[12] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[13] Conclusions (2014), The Netherlands

As the Charter does not expressly define what constitutes reasonable working hours,[14] situations are assessed on a case-by-case basis. For instance, the Committee found that the daily working time should in no circumstances (except for extraordinary situations) exceed 16 hours, even if, in compensation, it entails a limitation to the weekly working time.[15]

In assessing States Parties' compliance with their obligations under Article 2§1, the Committee considers that in addition to the number of working hours laid down by law in that State, it also has to consider the effect of collective agreements and the nature and extent of an employer's right to require overtime to be worked.[16]

Working overtime must not simply be left to the discretion of the employer or the employee.[17] The reasons for overtime work and its duration must be subject to regulation.[18] States Parties must set up an appropriate authority to supervise that daily and weekly working time limits are respected in practice.[19]

Article 2§1 provides for the progressive reduction of weekly working hours, to the extent permitted by productivity increases and other relevant factors. These "other factors" may be the nature of the work and the safety and health risks to which workers are exposed.[20] The widespread introduction of a working week of less than 40 hours has greatly reduced the need to shorten the working week.[21]

For the purpose of protecting the private and family life of workers, the Committee attaches importance to the fact that they must be clearly and duly informed about any changes to their working hours.[22] Statutory provisions introducing or authorising the flexibility of working time have been adopted in many States Parties.[23] Working hours are calculated as an average over given reference periods.[24] The result of these schemes is that hours worked in excess of the average number are compensated in practice by rest periods in the course of other weeks within the reference period.[25] The Committee considers that these measures are not as such in breach of the Charter.[26] Flexibility measures regarding working time are not as such in breach of the Charter.[27]

To be found in conformity with the Charter, domestic laws or regulations must fulfil three criteria:

(i) they must prevent unreasonable daily and weekly working time.[28]

(ii) they must operate within a legal framework providing adequate guarantees.[29]

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[14] Conclusions I (1969), Statement of Interpretation on Article 2§1
[15] Conclusions XIV-2 (1998), Norway; Conclusions (2014), Armenia
[16] Conclusions I (1969), Statement of Interpretation on Article 2§1
[17] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[18] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[19] Conclusions 2018, Georgia
[20] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[21] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[22] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[23] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[24] Conclusions XIV-2 (1998), Statement of Interpretation on Articles 2§1and 4§2
[25] Conclusions XIV-2 (1998), Statement of Interpretation on Articles 2§1 and 4§2
[26] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[27] Conclusions XIV-2 (1998), Statement of Interpretation on Articles 2§1 and 4§2
[28] *Confédération Française de l'Encadrement CFE-CGC* v. France, Complaint No. 9/2000, decision on the merits of 16 November 2001, §29
[29] *Confédération Française de l'Encadrement CFE-CGC* v. France, Complaint No. 9/2000, decision on the merits of 16 November 2001, §29

(iii) they must provide for reasonable reference periods for the calculation of average working time.[30] Periods that do not exceed four to six months are acceptable in terms of Article 2§1, and periods of up to a maximum of one year may also be acceptable in exceptional circumstances.[31] Objective or technical reasons or reasons concerning the organisation of work must justify such an extension of the reference period.[32]

A total working week (usual hours plus overtime) which, within the framework of "flexibility regulations", may attain up to sixty hours per week or exceed sixty hours per week is unreasonable.[33] The exclusion of certain categories of workers from statutory protection against unreasonable working hours is a ground of nonconformity.[34] Seafarers' right to reasonable weekly hours must be guaranteed by law.[35]

The Committee requires more safeguards if the flexible working hours have been agreed upon in collective agreements reached at the enterprise level.[36] Workers on flexible working time arrangements with long reference periods (i.e. one year) should not be asked to work unreasonable hours or an excessive number of long working weeks.[37]

Periods of on-call duty ("*périodes d'astreinte*") during which the employee has not been required to perform work for the employer, although they do not constitute effective working time, cannot be regarded as a rest period in the meaning of Article 2 of the Charter.[38] The assimilation of "périodes d'astreinte" to rest periods constitutes a violation of the right to reasonable working time provided in Article 2§1.[39] The absence of effective work, determined *a posteriori* for a period of time that the employee *a priori* did not have at their disposal, cannot constitute an adequate criterion for regarding such a period a rest period both for the stand-by duty at the employer's premises as well as for the on-call time spent at home. [40]

Opinion of the ECSR

The Committee notes that, through legislation and collective agreements, Denmark guarantees a reasonable weekly and daily working time.

The Committee notes that, although there is no public/ governmental supervision of collective agreements, the Danish Working Environment Authority, which is part of the Ministry of Employment, is responsible for carrying out inspections in companies and for drawing up rules with the aim of creating safe and healthy working conditions in Danish workplaces. The Authority does supervise the health and safety provisions as they arise from the Danish Working Environment Act (https://at.dk/en/regulations/working-environment-act/) and not as they arise from collective agreements.

The Committee noted that the EU Working Time Directive (2003/88/EC) was transposed in the Working Time Act and that Denmark opted out of the 48-hour requirement where there is

[30] *Confédération Française de l'Encadrement CFE-CGC* v. France, Complaint No. 9/2000, decision on the merits of 16 November 2001, §29
[31] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[32] Conclusions XIX-3 (2010), Spain
[33] Conclusions XIV-2 (1998), The Netherlands; Conclusions 2018, Turkey
[34] Conclusions 2018, The Netherlands
[35] Conclusions 2018, Estonia
[36] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[37] Conclusions XX-3 (2014), Germany
[38] *Confédération générale du travail (CGT)* v. France, Complaint No. 55/2009, decision on the merits of 23 June 2010, §64
[39] *Confédération Française de l'Encadrement* CFE-CGC v. France, Complaint No. 16/2003, decision on the merits of 12 October 2004, §53
[40] *Confédération Française de l'Encadrement* CFE-CGC v. France, Complaint No. 16/2003, decision on the merits of 12 October 2004, §§ 50-53

a collective agreement. However, the Committee noted that, although the Working Environment Authority does not supervise weekly working hours that exceed 48 hours on average, including overtime, it does supervise compliance with legal requirements on rest periods.

The Committee emphasised that if the Danish system is effective in practice by ensuring compliance with working hours and effective remedies, such as the possibility of going to court in the event of excessive working time, the ultimate objective of protecting the right is achieved. The Committee also informed that its analysis and interpretation is specific to the national context.

In the light of the information provided by the Government and the discussions with the Committee in Copenhagen, the Committee considers that there appear to be no major obstacles to Denmark's acceptance of Article 2§1 of the Charter.

Article 2§4 – *The right to just conditions of work*

With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:
4. to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;

Situation in Denmark

According to the Government, the Holiday Act entitles all workers, regardless of their occupation, to five weeks' paid holiday per year. Additional rights to additional holidays and time off for dangerous or unhealthy work can be agreed by the social partners.

ECSR interpretation (DIGEST)

States Parties to the Charter are required to eliminate risks in inherently dangerous or unhealthy occupations.[41] The Committee leaves the national legislature a certain latitude in the choice of occupations to be classed as dangerous or unhealthy.[42] However some sectors and occupations must be deemed dangerous or unhealthy, such as mining, quarrying, steel making and shipbuilding and occupations exposing employees to ionising radiation, extreme temperatures and noise.[43]

Whilst the elimination of dangerous and unhealthy occupations is an ideal to strive for, Article 2§4 requires that specific measures should be taken so long as these occupations still exist.[44]

If, on the one hand, a constant improvement of the technical conditions in which certain dangerous or unhealthy occupations are carried out represents a major factor for the reduction of the risk of accidents or disease, on the other hand, a decrease in working hours and the granting of additional holidays are equally necessary, as they allow for a reduced accumulation of physical and mental fatigue and a reduction in the exposure to risk, whilst at the same time granting workers longer periods of rest.[45]

In assessing States Parties' compliance with Article 2§4, the Committee examines firstly what measures have been taken to progressively eliminate the inherent risks in dangerous or

[41] Conclusions XX-3 (2014) Germany
[42] Conclusions II (1971), Statement of Interpretation on Article 2§4
[43] Conclusions XIV-2 (1998), Norway; *STTK ry and Tehy ry v. Finland*, Complaint No. 10/2000, decision on the merits of 17 October 2001, §27; Conclusions 2018, Bosnia and Herzegovina
[44] Conclusions V (1977), Statement of Interpretation on Article 2§4
[45] Conclusions V (1977), Statement of Interpretation on Article 2§4

unhealthy occupations.[46] Secondly, it examines what compensatory measures are applied to workers who are exposed to risks that cannot be or have not yet been eliminated or sufficiently reduced, either in spite of the effective application of the preventive measures or because they have not yet been applied.[47]

Elimination or reduction of risks

The first part of Article 2§4 requires States Parties to eliminate risks in inherently dangerous or unhealthy occupations.[48] This part is closely linked to Article 3 of the Charter, under which States Parties undertake to pursue policies and take measures to improve occupational health and safety.[49] Where appropriate, the Committee will take into account the information provided and the conclusions reached in respect of Article 3 of the Charter.[50]

For example, a legislative provision to the effect that the employees' exposure to such agents as radiation that causes hazards or risks to safety or health must be reduced to such a level that no hazard or risk is caused to the employees' safety, health or reproductive health has been found in conformity with Article 2§4.[51] Self-employed workers must be sufficiently covered by occupational health and safety regulations.[52]

Measures in response to residual risks

Where risk elimination is not possible or where risks have not been reduced or eliminated, Article 2§4 mentions two forms of compensation, namely reduced daily working hours and additional paid holidays.[53] The Committee stressed the importance of reducing working hours and providing additional holidays both because of the need for workers in hazardous situations to be alert and in order to limit the period of exposure to safety and health risks.[54]

In view of the emphasis in this provision on health and safety objectives, however, other approaches to reducing exposure to risks may also ensure conformity with the Charter.[55] Alternative approaches will be assessed on a case-by-case basis.[56]

Under no circumstances can financial compensation be considered a relevant and appropriate measure to achieve the aims of Article 2§4.[57] Early retirement, wage increases or food supplements are not relevant or appropriate measures to achieve the aims of Article 2§4 of the revised Charter.[58]

Compensation measures such as one additional day's holiday and a maximum weekly working time of 40 hours have been considered inadequate in that they do not offer workers exposed to risks regular and sufficient time to recover.[59]

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[46] Conclusions XX-3 (2014) Germany
[47] Conclusions XX-3 (2014) Germany
[48] Conclusions 2018, Latvia
[49] Conclusions 2018, Latvia
[50] Conclusions XVIII-2 (2007), Statement of Interpretation on Article 2§4
[51] Conclusions 2014, Finland
[52] Conclusions XX-3 (2014), Greece
[53] Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §236
[54] Conclusions III (1973), Ireland
[55] Conclusions (XVIII-2) 2007, Statement of Interpretation on Article 2§4
[56] Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §236
[57] Conclusions XIII-3 (1995) Greece
[58] Conclusions 2003, Bulgaria ; Conclusions 2007, Romania
[59] Conclusions XX-3 (2014), Greece

Measures intended to compensate workers for exposure to residual risks must be regulated at the central level and must not be left to the agreements between the social partners.[60]

Opinion of the ECSR

The Committee takes note of the information provided by the Government. The Committee notes that working hours are reduced to a maximum of 6 hours per day with breaks in order to reduce exposure in professions with occupational risks.

The Committee was informed that additional holidays and time off for workers employed in dangerous and unhealthy occupations can be agreed by the social partners.

However, despite assurances that compensatory measures were in place to protect workers exposed to risks in dangerous or unhealthy occupations, the Committee was not provided with sufficient information on:

- the measures taken to progressively eliminate the risks inherent in dangerous or unhealthy occupations.

In the light of the information provided by the Government and discussions with the Committee in Copenhagen, the Committee considers that there appear to be no major obstacles to Denmark's acceptance of Article 2§4.

Article 4§4 – *The right to a fair remuneration*

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

4. to recognise the right of all workers to a reasonable period of notice for termination of employment;

Situation in Denmark

The Government indicates that notice periods are generally not regulated by law, but by collective or individual agreements. In Denmark, the social partners play a crucial role in regulating wages and working conditions, according to the Government. The Danish labour market model is based on employers and employees being organised in associations and trade unions that represent the broad interests of their members in collective bargaining. As far as possible, the State/ Government refrains from intervening in the regulation of pay and working conditions.

The Government emphasises that the notice period applicable to both the employee and the employer must be stated in the employment contract. If the employment is covered by a collective agreement, the notice period for both parties will normally follow the provisions of that agreement.

If the employee is employed under the Salaried Employees Act (*Funktionærloven*), there are specific regulations that apply in conjunction with the termination of employment. Pursuant to the Salaried Employees Act, the employee must give 1 month's notice before resigning. Other regulations apply to employers depending on the length of service of the employee. As noted by the Government, the employer's notice period under the Salaried Employees Act is as follows:

[60] Conclusions 2014, The Netherlands

Duration of employment	Notice periods
0–6 months	1 month
6 months – 3 years	3 months
3–6 years	4 months
6–9 years	5 months
9+ years	6 months
Agreed probationary period of max. 3 months	14 days
Agreed temporary assignment of max. 1 month	No notice

The notice period for a salaried employee is 1 month. However, no notice is required from the employee during the agreed probationary period of max. 3 months or if the parties have agreed to temporary employment of max. 1 month.

As regards seafarers, the length of the minimum notice period for seafarers and captains is, according to the Government, in line with the provisions of the ILO Maritime Labour Convention, which Denmark has ratified and implemented.

ECSR interpretation (DIGEST)

Appendix: Art 4§4 shall be understood as not to prohibit immediate dismissal for any serious offence.[61]

This paragraph forms part of the Article on remuneration, as the main purpose of giving a reasonable notice is to allow the person concerned a certain time to look for other work before their current employment ends, i.e. while they are still receiving wages.

The Committee will assess the national situation regarding Art 4§4 on the basis of the following aspects:

1. The rules governing the setting of notice periods (or the level of compensation in lieu of notice):

a. according to the source of the rule, namely the law, collective agreements, individual contracts and court judgments;[62]
b. during any probationary periods, including those in the public service; the Committee wishes to see an explicit minimum period of notice even if the length of the probationary employment period is short or has recently been reduced by law;[63]
c. with regard to the treatment of employees in insecure jobs;[64]
d. in the event of termination of employment for reasons outside the parties' control (including insolvency, death of the employer if they are a natural person); in principle such circumstances may not warrant failure to give notice;[65]
e. and any circumstances in which employees can be dismissed without notice or compensation.[66]

[61] Appendix to the European Social Charter - European Treaty Series - No. 35
[62] Conclusions 2018, Statement of Interpretation on Article 4§4
[63] Conclusions 2018, Statement of Interpretation on Article 4§4
[64] Conclusions 2018, Statement of Interpretation on Article 4§4
[65] Conclusions 2018, Statement of Interpretation on Article 4§4
[66] Conclusions 2018, Statement of Interpretation on Article 4§4

2. Acknowledgment, by law, collective agreement or individual contract, of length of service, whether with the same employer or in circumstances of successive precarious forms of employment relations;[67]

3. The components of the employee's remuneration during the notice period.[68]

Reasonable character of the period of notice

The Committee has refrained from defining in absolute terms the word "reasonable".[69] In fact it followed the reverse procedure and examined on a case-by-case basis if the duration of certain periods of notice were clearly "unreasonable".[70] A reasonable notice period is one which takes account of the employees' length of service, the need not to deprive them abruptly of their means of subsistence and the need to inform them of the termination in good time to enable them to seek a new job, and during which employees are entitled to their regular remuneration.[71] It is for governments to prove that these elements have been taken into account when devising and applying the basic rules on notice periods.[72] The Committee has concluded, for example, that the following periods of notice and/or compensation in lieu thereof were not in conformity to the Charter:

- five days' notice after less than three months of service, even during the probationary period;[73]
- one week's notice after less than six months of service;[74]
- two weeks' notice after more than six months of service;[75]
- less than one month' notice after one year of service;[76]
- one month' notice for workers with five or more years' service;[77]
- eight weeks' notice after at least ten years of service;[78]
- twelve weeks' notice for workers dismissed for long-term working incapacity who have five or more years of service.[79]

Receipt of wages in lieu of notice is admitted, provided that the sum paid is equivalent to that which the worker would have earned during the corresponding period of notice.[80] In order to ensure that the protection granted by Article 4§4 of the Charter is effective, the notice and/or compensation should not be left to the discretion of the parties to the employment contract, but should be governed by legal instruments such as legislation, case law, regulations or collective agreements.[81]

Cases where the notice period should apply

Article 4§4 does not apply solely to dismissals, but to all cases of termination of employment, such as termination due to bankruptcy, invalidity or death of the employer who is a natural person.[82]

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[67] Conclusions 2018, Statement of Interpretation on Article 4§4
[68] Conclusions 2018, Statement of Interpretation on Article 4§4
[69] Conclusions XIII-3 (1995), Portugal
[70] Conclusions XIII-3 (1995), Portugal
[71] Conclusions 2018, Statement of Interpretation on Article 4§4
[72] Conclusions 2018, Statement of Interpretation on Article 4§4
[73] Conclusions 2007, Albania
[74] Conclusions XIII-3 (1995), Portugal
[75] Conclusions XVI-2 (2004), Poland
[76] Conclusions XIV-2 (1998), Spain
[77] Conclusions 2007, Albania
[78] Conclusions 2010, Turkey
[79] Conclusions 2010, Estonia
[80] Conclusions 2010, Turkey
[81] Conclusions 2014, Russian Federation
[82] Conclusions XIV-2 (1998), Spain

The right to reasonable notice of termination of employment applies to all categories of workers independently of their status, including those in non–standard such as fixed-term,[83] temporary, part-time,[84] intermittent, seasonal or complementary[85] employment. It applies to civil servants and contractual staff in the civil service,[86] to manual workers[87] and in all sectors of activity.[88] It also applies during the probationary period[89] and upon early termination of fixed-term contracts.[90] Domestic law must be broad enough to ensure that no workers are left unprotected.[91]

When a decision to terminate employment on grounds other than disciplinary ones is subject to certain procedures being followed, the period of notice starts only after the decision has been taken.[769] The period of notice for part-time workers is calculated on the basis of length of service and not of the effective weekly working time.[92] That of workers with consecutive fixed-term contracts is calculated on the basis of length of service accrued on all consecutive contracts.[93] Any reduction of the legal period of notice by collective agreement is allowed only insofar as a reasonable period of notice is maintained.[94] The period of notice applied in the probationary period may be shorter as long as it remains reasonable in relation to the authorised maximum length of the probationary period.[95]

Cases of exclusion of the notice period

The only exception to the right of all workers to a reasonable period of notice concerns immediate dismissal for serious offences set out in the Annex to the Charter.[96] It may be the result of the accumulation of several less serious breaches, if there have been prior written warnings from the employer.[97]

By way of example, the Committee considered that the following facts amounted to serious misconduct:

- disclosure of state, professional, commercial or technological secrets;[98]f violation of equal opportunities policy or sexual harassment;[99]
- refusal to provide information as required by law, regulation or work regulations;[100]
- working under the influence of alcohol, narcotic or toxic substances;[101]
- abandonment of post;[102]

[83] Conclusions XIV-2 (1998), Spain
[84] Conclusions XVIII-2 (2007), Slovak Republic, see also Conclusions 2007, Albania
[85] Conclusions 2010, Bulgaria
[86] Conclusions 2010, Georgia
[87] Conclusions XVI-2 (2003), Greece
[88] Conclusions I (1969), Italy
[89] General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§ 26 and 28
[90] Conclusions XIV-2 (1998), Spain
[91] Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, §199 769 Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, §200
[92] Conclusions XVIII-2 (2007), Slovak Republic
[93] Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, §200
[94] Conclusions XVIII-2 (2007), The Netherlands
[95] Conclusions 2014, Estonia
[96] Appendix to the European Social Charter - European Treaty Series - No. 35
[97] Conclusions 2010, Albania
[98] Conclusions 2014, Lithuania
[99] Conclusions 2014, Lithuania
[100] Conclusions 2014, Lithuania
[101] Conclusions 2014, Lithuania
[102] Conclusions 2014, Lithuania

- refusal to undergo mandatory medical checks;[103]
- unjustified absences of more than five consecutive days or more than ten days per year;[104]
- abnormal decrease in productivity;[105]
- immoral acts making it impossible for workers to be kept in teaching positions.[106]

Other permitted grounds of dismissal without a period of notice or compensation, in particular a failure by the worker to perform, a loss of trust in the worker or a call up of the worker for military service have been found not to be in conformity with the Charter.[107] Immediate dismissal on the following grounds has also been rejected:

- death of the employer who is a natural person or winding-up of the company;[108]
- withdrawal of administrative licenses required to perform the job;[109]
- request by bodies or officials authorised by the law;[110]
- duly certified unfitness for work;[111]
- economic, technological or organisational circumstances requiring changes in the workforce;[112]
- insufficient qualification for the post;[113]
- transfer of the employment contract to a successor employer;[114]
- force majeure;[115]
- arrest and custody.[116]

Opinion of the ECSR

With regard to the situation in Denmark, the Committee notes that guarantees are in place to ensure a reasonable period of notice for termination of employment.
The Committee draws attention to the fact that the reasonableness of notice periods is not assessed solely on the basis of the length of employment.

The Committee noted that the aspects listed below may be included in the employment contract or collective agreement and determined through individual or collective negotiations. However, it was not able to identify sufficient information on:

- the rules applicable to all categories of workers, irrespective of their status;
- the treatment of employees in insecure jobs and in the event of termination of employment for reasons outside the control of the parties (including, in the case of natural persons, insolvency, invalidity or death of the employer);
- the circumstances in which employees may be dismissed without notice (or compensation).

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter.

[103] Conclusions 2014, Lithuania
[104] Conclusions 2014, Portugal
[105] Conclusions 2014, Portugal
[106] Conclusions 2014, Russian Federation
[107] Conclusions 2010, Armenia
[108] Conclusions 2014, Georgia
[109] Conclusions 2014, Lithuania
[110] Conclusions 2014, Lithuania
[111] Conclusions 2014, Lithuania
[112] Conclusions 2014, Malta
[113] Conclusions 2014, Russian Federation
[114] Conclusions 2014, Slovenia
[115] Conclusions 2014, Turkey
[116] Conclusions 2014, Turkey

It encourages the Government to continue its efforts and to consider acceptance of Article 4§4 in the near future.

Article 4§5 – *The right to a fair remuneration*
With a view to ensuring the effective exercise of the right to a fair remuneration, the

Contracting Parties undertake:

5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

Situation in Denmark

The Government indicates in the written information submitted in August 2023 that the Danish labour market is based on employers and employees being organised in strong associations and trade unions that represent the broad interests of their members in collective bargaining. Pay and working hours are primarily regulated by collective agreements or individual employment contracts. There is no statutory minimum wage in Denmark. According to the Government, the State refrains from intervening in the regulation of pay and working conditions as much as possible. Wages are not regulated by law but by collective agreements for different types of jobs or by individual agreements.

Pay may be expressed as an hourly, daily or monthly rate or may be agreed in some other way. For example, pay may be piecework, performance-related pay or similar. Some collective agreements stipulate that pay must include an individually negotiated supplement to the minimum rate. Others stipulate that pay is determined by negotiation with the company. According to the Government, total pay often exceeds the hourly rate because of other pay components.

ECSR interpretation (DIGEST)

The deductions envisaged in Article 4§5 can only be authorised in certain circumstances which are well-defined in a legal instrument (law, regulation, collective agreement or arbitration award).[117] Therefore, workers should not be allowed to waive their right to limitation of deductions from their wage, and the way in which such deductions are determined should not be left at the disposal of the sole parties to the employment contract.[118] Article 4§5 also applies to civil servants and contractual staff in the civil service.[119]
Such deductions must be subject to reasonable limits and should not *per se* result in depriving workers and their dependents of their means of subsistence.[120]

All forms of deduction are covered by this provision, including trade union dues, disciplinary fines, maintenance payments, repayment or wage advances, tax debts, compensation for benefits in kind, wage assignments or transfers, etc.[121]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the information provided in the report.

The Committee observes that the Government has not submitted information on:

[117] Conclusions V (1977), Statement of Interpretation on Article 4§5
[118] Conclusions 2005, Norway; Conclusions 2018, The Netherlands
[119] Conclusions 2014, Portugal
[120] Conclusions 2014, Estonia
[121] Conclusions 2014, Estonia

- the conditions and circumstances under which deductions from wages are envisaged by collective agreements.
- whether deductions from wages are permitted for workers not covered by collective agreements and, if so, under what conditions.

However, the Committee noted that the Government indicated that the total pay often exceeds the hourly rate because of other pay components.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider acceptance of Article 4§5 of the Charter.

Article 7§1 – *The right of children and young persons to protection*
With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;

Situation in Denmark

The Government indicates in the written information submitted in August 2023 that Denmark has laid down a number of detailed rules in this area of the law in order to make sure that work carried out by young people under the age of 18 is fully safe and healthy.

According to Articles 28 and 29 of the Executive Order on the Work of Young Persons[122], teenagers aged 13 and 14, or young persons who are in compulsory schooling, may only be employed in work that is considered "light" and does not involve any danger or harm to the health and safety of the young person.

Article 29 of the Executive Order states that young persons who have reached the age of 13 may be employed only in the types of light work listed in Appendices 7-9. Appendix 7 lists the tasks considered "light" under Danish law, while Appendices 8 and 9 contains detailed exceptions to Appendix 7.

Furthermore, as noted in the report, Denmark has laid down specific rules on the number of hours young persons are allowed to work. To learn more about these rules, the Government refers to the information submitted below concerning Article 7§3 of the Charter.

ECSR interpretation (DIGEST)

In application of Article 7§1, domestic law must set the minimum age of admission to employment at 15 years.

The prohibition on the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households.[123] It also extends to all forms of economic activity, irrespective of the status of the worker (worker, self-employed, unpaid family helper or other).[124]

[122] Arbejdstilsynets bekendtgørelse nr. 1049 af 30. maj 2021 om unges arbejde
[123] Conclusions I (1969), Statement of Interpretation on Article 7§1
[124] International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §§ 27-28

The effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised.[125] The Labor Inspectorate has a decisive role to play in this respect.[126]

Article 7§1 allows for an exception concerning light work, i.e. work which does not entail any risk to the health, moral welfare, development or education of children.[127] States Parties are required to define the types of work which may be considered light, or at least to draw up a list of those which are not.[128] The definition of light work authorised by legislation must be sufficiently precise.[129] Work considered to be light ceases to be so if it is performed for an excessive duration.[130] States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work.[131]

The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education.[132]

Children who are still subject to compulsory schooling can carry out light work for two hours on a school day and 12 hours a week in term time outside the hours fixed for school attendance.[133] However a situation in which a child under the age of 15 works for between 20 and 25 hours per week during school term, or three hours per school day and six to eight hours on week days when there is no school is contrary to the Charter.[134]

Children should be guaranteed at least two consecutive weeks of rest during the summer holidays.[135]

Regarding work done at home, States Parties are required to monitor the conditions under which it is performed in practice.[136]

Opinion of the ECSR

The Committee notes that the provisions in force regarding the minimum age for admission to employment generally comply with the requirements of the Charter.

The Committee took note that in Denmark, minors aged between 13 and 15 may be employed under specific conditions, avoiding dangerous or unhealthy work and ensuring that employment does not deprive them of the benefit of schooling.

The Committee found that this right was protected in practice. However, it was unable to assess the following aspects:

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[125] International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32
[126] International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32
[127] International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §29
[128] International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §29
[129] Conclusions 2019, Albania
[130] International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §§ 29-31
[131] Conclusions 2015, Statement of interpretation on Articles 7§1 and 7§3
[132] Conclusions 2015, Statement of interpretation on Articles 7§1 and 7§3
[133] Conclusions 2011, Portugal; Conclusions 2019, Armenia
[134] Conclusions 2019, Armenia
[135] Conclusions 2015, Statement of interpretation on Articles 7§1 and 7§3
[136] Conclusions 2006, General Introduction on Article 7§1

- measures taken by the authorities (the Danish Work Environment Authority) to detect child labour, including children working in the informal economy.
- data on the number of children actually working, and information on the measures taken to identify and monitor sectors where there is a strong suspicion that children are working illegally.
- how enforcement of the legislation in this regard is supervised, and the penalties for non-compliance.

The Committee acknowledged that there might be aspects that relate to the particularities of the Danish labour market, which can render the collection of some specific data difficult.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and consider acceptance of Article 7§1 of the Charter.

Article 7§2 – *The right of children and young persons to protection*

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

2. to provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy;

Situation in Denmark

The Government indicates that, under Danish law, young people under the age of 18 are not permitted to engage in employment that is considered to be dangerous or harmful to their health.

Danish law stipulates that employers of young people under the age of 18 must ensure that the work tasks performed by young persons are carried out in a way that is fully healthy and safe. This provision derives from Article 4 of the Executive Order on the Work of Young Persons.

Furthermore, as explained by the Government, Denmark has introduced rules to ensure that such young persons cannot, as a general rule, be employed in tasks requiring, for example, certain types of technical aids, most substances and materials, physical stress that may constitute a danger to their health and development, and work involving the risk of crashing or collapsing. These rules are laid down in articles 10 to 15 of the Executive Order on the Work of Young Persons.

However, if the work carried out by a young person who has reached the age of 15 is a necessary part of his or her vocational training, the young person is exempted from some of the above-mentioned prohibitions. This applies to the extent necessary for the completion of the specific education or vocational training. This follows from Article 9 of the Executive Order.

According to the Government, the competent authority in Denmark has not prescribed any further specific conditions and does not monitor such arrangements, as mentioned in the case law of the ECSR. The Danish Working Environment Authority monitors compliance by employers of persons under 18 years of age.

ECSR interpretation (DIGEST)

Appendix: This provision does not prevent Parties from providing in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons.[137]

In application of Article 7§2, domestic law must set a higher minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise during the course of that work.[138]

However, if such work proves absolutely necessary for their vocational training, children may be permitted to perform it before the age set, but only where such work is carried out in accordance with conditions prescribed by the competent authority.[139] Children must have received training for performing dangerous tasks.[140] The Labour Inspectorate must monitor these arrangements.[141]

Opinion of the ECSR

As regards the situation in Denmark, the Committee notes that a higher minimum age for admission to employment is fixed for prescribed occupations considered dangerous or harmful to health.

The competent authority in Denmark has not prescribed, nor does it monitor, any conditions under which young persons who have reached the age of 15 may be permitted to perform dangerous or unhealthy work that is a necessary part of their vocational training. Nonetheless, the Danish Working Environment Authority monitors that employers of persons under the age of 18 comply with the statutory obligation to ensure that work tasks carried out by young persons are performed in a way that is fully healthy and safe for the young person concerned.

In the light of the information provided by the Government and subject to more detailed information on the supervisory actions of the Danish Working Environment Authority in practice, the Committee considers that there do not appear to be any major obstacles to the Denmark's acceptance of Article 7§2 of the Charter.

Article 7§3 – *The right of children and young persons to protection*

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;

Situation in Denmark

The Government points out that Denmark has laid down specific rules for young persons aged between 13 and 15, or those still in compulsory education, to ensure that employment does not deprive them of the full benefit of their schooling or education.

[137] Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163
[138] Conclusions 2006, France
[139] Conclusions 2006, Norway
[140] Conclusions 2006, France
[141] Conclusions 2006, Norway

Under Danish law, these young persons are not allowed to work between 8 p.m. and 6 a.m. However, Denmark has not adopted rules forbidding this category of young people from delivering newspapers from 6 a.m. before going to school, as stated in the ECSR case law.

According to the Government, these young persons are allowed to do light work for up to 2 hours a day on school days. Outside school days, the daily limit for these young persons is 7 hours of work. In addition, they are allowed to work a maximum of 12 hours during school weeks, and 35 hours a week during non-school weeks. This is stated in Chapter 6 of the Executive Order on the Work of Young Persons.

As regards rules on holidays, the Government indicates that the Executive Order prescribes that young persons aged between 13 and 15, or who are still in compulsory schooling, must – as far as possible – enjoy an entirely work-free period during the summer school holidays.

ECSR interpretation (DIGEST)

Article 7§3 requires States Parties to ensure that children still subject to compulsory education and employed to work are not deprived of the full benefit of their education.[142]

Only light work is permissible for schoolchildren under this provision.[143] The notion of "light work" is identical to that under article 7§1.[144]

In the case of States Parties that have set the same age limit for admission to employment and the end of compulsory education, which is over 15 years, questions related to light work are examined under Article 7§1.[145] However, since Article 7§3 is concerned with the effective exercise of the right to compulsory education, matters relating thereto are assessed under that Article.[146]

Adequate safeguards must be in place to allow the authorities (labour inspectorate, social and education services) to protect children from work which could deprive them of the full benefit of their education.[147]

During school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework.[148]

Allowing children to work before school begins in the morning is, in principle, contrary to Article 7§3.[149] Allowing children aged 15 years still subject to compulsory education to deliver newspapers from 6 a.m. for up 2 hours per day, 5 days per week before school is not in conformity with the Charter.[150]

In order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays.[151] The assessment of compliance over the school year takes account of the length and distribution of holidays, the timing of uninterrupted periods of rest, the nature and the length of the light work and of the control efficiency of the labour inspectorate.[152]

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[142] Conclusions I (1969), Statement of Interpretation on Article 7§3
[143] Conclusions 2015, Statement of interpretation on Articles 7§1 and 7§3
[144] Conclusions I (1969), Statement of Interpretation on Article 7§1; Conclusions 2015, Statement of interpretation on Articles 7§1 and 7§3
[145] Conclusions 2006, Statement of Interpretation on Article 7§3
[146] Conclusions 2006, Statement of Interpretation on Article 7§3
[147] Conclusions V (1977), Statement of Interpretation on Article 7§3; Conclusions 2006, Portugal
[148] Conclusions 2006, Albania; Conclusions 2019, Serbia
[149] Conclusions 2011, 2019, Italy
[150] Conclusions XVII-2 (2005), The Netherlands
[151] Conclusions XVII-2 (2005), The Netherlands
[152] Conclusions 2011, Statement of Interpretation on Article 7§3

States Parties must provide for a mandatory and uninterrupted period of rest during school holidays.[153] Its duration shall not be less than 2 consecutive weeks during the summer holidays.[154]

Opinion of the ECSR

The Committee takes note of the measures already in place to ensure that children subject to compulsory education and work are not deprived of the full benefit of their education. However, young persons are not prohibited from working before school starts in the morning. Furthermore, there are no guarantees as to the safeguards put in place to enable the competent authorities (the Danish Authority on Working Environment, social and educational services) to protect children from work that could deprive them of the full benefit of their education.

On the basis of the information provided by the Government in the written report and during the meeting in Copenhagen, the Committee considers that there are some obstacles to Denmark's acceptance of Article 7§3 of the Charter. Nevertheless, the Committee remains available for further dialogue, in order to better understand the situation in Denmark and to further assess whether the protection of this right is ensured in the specific context of the country.

Article 7§4 – *The right of children and young persons to protection*

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

4. to provide that the working hours of persons under 16 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;

Situation in Denmark

The Government states in the written information submitted in August 2023 that in Denmark, the issue of working time is a matter for agreement between the social partners. Paragraph 56 of the Vocational Education and Training Act stipulates that the employer may only in exceptional circumstances require the apprentice to carry out tasks that have no educational purpose and only if the educational objectives can still be achieved.

In addition, Article 12 of the Executive Order on the Work of Young Persons states that persons under the age of 18 shall not be exposed to any physical stress likely to harm their health or development either in the short or in the long term. Furthermore, they must not be exposed to unnecessary physical strain or unsuitable working positions or movements.

As stressed by the Government, when taking on young persons under the age of 18 in Denmark, the employer must ensure that the work assignment can be carried out in complete safety and health. This is why Denmark has laid down detailed rules on the number of hours these young persons may work. These rules can be found in Articles 16-20 of the Executive Order on the Work of Young Persons.

The Government states in the report that young persons, who have reached the age of 15 and who are not subject to compulsory schooling may not work more than the number of working hours that adults in the same job are allowed to work. The same rule also explicitly states that

[153] Conclusions 2011, Statement of Interpretation on Article 7§3
[154] Conclusions 2011, Statement of Interpretation on Article 7§3

these young persons may not work more than 8 hours a day and 40 hours a week. Furthermore, when a young person at this age works 8 hours a day, the working time must be continuous.

In addition, Danish law contains rules according to which young persons between the ages of 13 and 15, or who are subject to compulsory schooling, may only work the number of hours specified in Chapter 6 of the Executive Order on the Work of Young Persons. For further information, the Government refers to the description of the conformity of Danish legislation with Article 7§3 of the Charter.

When employing young persons over the age of 13, special consideration must be given to their age, development, health and schooling. This follows from Article 42 of the Executive Order on the Work of Young Persons.

ECSR interpretation (DIGEST)

Under Article 7§4, domestic law must limit the working hours of persons under 16 years of age who are no longer in compulsory education.[155] The limitation may be the result of legislation, regulations, contracts or practice.[156]

For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to Article 7§4.[157] However, for persons over 16 years of age, the same limits are in conformity with Article 7§4.[158]

Opinion of the ECSR

The Committee takes note of the measures already in place to ensure that the working time of persons under the age of 16 is limited in accordance with the needs of their development, in particular their need for vocational training. However, young persons who have reached the age of 15 and who are not subject to compulsory schooling in Denmark may work up to eight hours a day or forty hours a week, which the Committee interprets as contrary to the Charter.

On the basis of the information provided by the Government in the written information and during the meeting in Copenhagen, the Committee considers that there are some obstacles to Denmark's acceptance of Article 7§4 of the Charter. Nevertheless, the Committee remains available for further dialogue in order to better understand the situation in Denmark and to further assess whether the protection of this right is ensured in the specific context of the country.

Article 7§5 – *The right of children and young persons to protection*

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;

Situation in Denmark

In the written information submitted in August 2023, the Government indicates that in Denmark, remuneration is a matter for agreement between the social partners. Paragraph 55

[155] Conclusions 2006, Albania
[156] Conclusions 2006, Albania
[157] Conclusions XI-1 (1991), The Netherlands
[158] Conclusions 2002, Italy

of the Vocational Education and Training Act stipulates that the apprentice's salary should not be less than the salary determined by the social partners. If the area is not covered by a collective agreement, the minimum salary will be determined by a board consisting of two representatives of the employers and two representatives of the employees and a chairperson appointed by the Danish Labour Court. A decision must be taken by a majority of the representatives of the social partners.

ECSR interpretation (DIGEST)

In application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances.[159] This right may result from statutory law, collective agreements or other means.[160] The "fair" or "appropriate" character of the wage is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (aged eighteen or above).[161] In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes and social security contributions.[162]

Young workers

The young worker's wage may be less than the adult starting wage, but any difference must be reasonable.[163] It must not be too substantial and ought to be for a limited time.[164] For fifteen/sixteen-year-olds, a wage of 30% lower than the adult starting wage is acceptable and for sixteen/eighteen year-olds, the difference may not exceed 20%.[165]

The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter.[166] If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.[167]

Apprentices

Apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account.[168] However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers.[169] Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the apprentice's allowance should be gradually increased throughout the contract period, starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end.[170] After two or three years' vocational training, an apprentice is sufficiently trained and should be considered as an adult worker for wage purposes.[171]

Opinion of the ECSR

[159] Conclusions 2019, Azerbaijan
[160] Conclusions 2019, Azerbaijan
[161] Conclusions XI-1 (1991), United-Kingdom
[162] Conclusions XI-1 (1991), United-Kingdom; Conclusions 2019, Albania
[163] Conclusions 2019, Azerbaijan
[164] Conclusions II (1971), Statement of Interpretation on Article 7§5
[165] Conclusions 2006, Albania
[166] Conclusions IX-1 (1987), United Kingdom
[167] Conclusions IX-1 (1987), United Kingdom
[168] Conclusions II (1971), Statement of Interpretation on Article 7§5
[169] Conclusions 2019, Albania
[170] Conclusions 2006, Portugal; Conclusions XVII-2 (2005), Germany; Conclusions 2019, Austria
[171] Conclusions II (1971), Statement of Interpretation on Article 7§5

The Committee notes the measures taken to ensure a fair wage for apprentices. However, no information has been provided on the collective agreement regulation of the right of young workers to a fair wage and/or other appropriate allowances.

On the basis of the information provided by the Government in the written information and during the meeting in Copenhagen, the Committee considers that there are some obstacles to Denmark's acceptance of Article 7§5 of the Charter. Nevertheless, the Committee remains available for further dialogue in order to better understand the situation in Denmark and to further assess whether the protection of this right is ensured.

Article 7§6 – *The right of children and young persons to protection*

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:
6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;

Situation in Denmark

The Government indicates that Denmark has a rule similar to Article 7§6 of the Charter. The Danish rule states that if young people who have reached the age of 15 and are not subject to compulsory schooling work as part of their education, the time spent in education must be included in the daily and weekly working hours. This follows from Article 18 of the Executive Order on the Work of Young Persons.

According to the Government, Denmark has no rules on the employer's consent. Besides, Denmark has a rule that if the young person works for more than one employer, the total working time must be calculated in accordance with Article 19 of the above-mentioned Executive order. In this regard, the Government also refers to the information submitted concerning Article 7§4 of the Charter.

ECSR interpretation (DIGEST)

Time spent on vocational training by young people during normal working hours must be treated as part of the working day.[172] Such training must, in principle, be done with the employer's consent − but not necessarily financed by the latter and be related to the young person's work.

Training time must thus be remunerated as normal working time (by either the employer or by public funds as the case may be), and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked.[173]

Opinion of the ECSR

The Committee takes note of the measures already in place and it considers that there appear to be no obstacles to the immediate acceptance of Article 7§6.

Article 7§7 – *The right of children and young persons to protection*

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

[172] Conclusions XV-2 (2001), The Netherlands
[173] Conclusions V (1977), Statement of Interpretation on Article 7§6

7. to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;

Situation in Denmark

The Government indicates that Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time applies in Denmark. According to the Directive, an employee is entitled to paid annual leave of at least 4 weeks. The minimum period of paid annual leave may not be replaced by an allowance in lieu, unless the employment relationship is terminated.

The Holiday Act does not contain any special provisions for employees under a certain age. According to the Holiday Act, an employee cannot validly waive his or her right to holiday or its payment.

As explained by the Government, all employees in Denmark are entitled to 5 weeks' paid holiday per year. Four weeks may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

An employee who falls ill before the holiday is due has the right to take the holiday at a later date. An employee who falls ill during the holiday is entitled to compensatory leave after up to 5 sick days, depending on the employee's seniority. This guarantees the employee 4 weeks' paid holiday. These rules also apply even if the holiday is covered by a collective holiday closure of the company. If the employee is unable to take the holiday before the end of the holiday period due to illness, maternity or any other fixed holiday impediment, the holiday is carried over to the following holiday period.

ECSR interpretation (DIGEST)

In application of Article 7§7, young persons under eighteen years of age must be given at least three weeks' annual holiday with pay.

The arrangements which apply are the same as those applicable to annual paid leave for adults (Article 2§3).[174] Employed persons under 18 should not have the option of waiving their annual paid holiday.[175] They should not have the option of giving up their annual holiday for financial compensation either.[176]

According to Article 7§7, employees incapacitated for work by illness or accident during all or part of their annual leave must have the right to take the leave lost at some other time - at least to the extent needed to secure to them the four weeks' paid annual leave provided for in the Charter.[177] This principle applies in all circumstances, regardless of whether incapacity begins before or during leave - and also in cases where a company requires workers to take leave at a specified time.[178]

Opinion of the ECSR

The Committee takes note of the measures in place. It considers that there appear to be no obstacles to the immediate acceptance of Article 7§7.

Article 7§8 – *The right of children and young persons to protection*

[174] Conclusions 2019, Albania
[175] Conclusions 2019, Albania
[176] Conclusions 2019, Azerbaijan
[177] Conclusions 2006, France
[178] Conclusions 2006, France, citing Conclusions XII-2, Article 2§3

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;

Situation in Denmark

The Government indicates that it is a general rule in Danish law that young persons under the age of 18 cannot be employed in night work.

Denmark has laid down specific rules about where and when young people under the age of 18 are not allowed to work. For instance, according to the Government, they cannot be employed during opening hours, e.g. in bakeries, kiosks, video stores and similar shops between 6 p.m. and 6 a.m. on weekdays, and between 2 p.m. and 6 a.m. on Saturdays, Sundays, holidays and bank holidays, unless they are working there alongside an adult. This follows from Article 13 of the Executive Order on the Work of Young Persons.

However, according to the information submitted, there are a few exceptions to this in Danish law. For example, if the young person works in a shopping centre where there is either surveillance or security guards patrolling the centre, they are allowed to work there alone. Under such circumstances, young persons under the age of 18 can work during extended hours of the day, but never between 8 p.m. and 6 a.m.

In addition, young persons who have reached the age of 15 and who are not subject to compulsory schooling may work from 4 a.m. in certain parts of confectionery or bakery shops or in farm stables. This is laid down in Article 22 of the Executive Order. There are a few other exceptions in Article 22 of the Executive Order, for example that this category of young people may work until midnight in cinemas, theatres, hotels and at similar places.

ECSR interpretation (DIGEST)

In application of Article 7§8, domestic law must provide that persons under eighteen years of age are not employed in night work. Laws or regulations must not cover only industrial work.[179] Exceptions can be made as regards certain occupations in very limited cases, if they are: explicitly provided in domestic law; necessary for the proper functioning of the economic sector, and if the number of young workers concerned is low.[180] It is up to domestic laws or regulations to define the period of time considered as being “night”.[181]

Opinion of the ECSR

The Committee notes that there are provisions in place restricting the employment of children engaged in night work.

In view of these requirements, the Committee considers that there appear to be no obstacles to the immediate acceptance of Article 7§8.

Article 7§9 – *The right of children and young persons to protection*

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

[179] Conclusions XVII-2 (2005) Portugal, Turkey
[180] Conclusions XVII-2 (2005), Malta
[181] Conclusions I (1969), Statement of Interpretation on Article 7§8

9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;

Situation in Denmark

The Government indicates that there are no specific provisions in Denmark requiring young persons under the age of 18 who are employed in occupations prescribed by national law or regulations to undergo regular medical examinations.

As the Government points out, the Danish rules are a safeguard against placing young people in situations where a regular medical control is necessary. This is because young people must not be placed in situations that may be detrimental to their health or safety.

ECSR interpretation (DIGEST)

In application of Article 7§9, domestic law must provide for compulsory regular medical check-ups for persons under eighteen employed in those occupations specified by domestic laws or regulations.[182]

These check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed.[1045] They may, however, be carried out by the occupational health services, if these services have the specific training to do so.[183]

The obligation entails a full medical examination on recruitment and regular check-ups thereafter.[184] The intervals between check-ups must not be too long: in this regard, an interval of two years has been considered excessive.[185]

The medical check-ups foreseen by Article 7§9 should take into account the skills required for the work envisaged.[186]

Opinion of the ECSR

The Committee notes that domestic law does not provide for compulsory regular medical check-ups for persons under 18 years employed in specific occupations, given that this category of employees is not supposed to do the kind of work that require medical examination.

On the basis of the information provided by the Government in the written report and during the meeting in Copenhagen, the Committee considers that there are some obstacles to Denmark's acceptance of Article 7§9 of the Charter. Nevertheless, the Committee remains available for further dialogue in order to better understand the situation in Denmark and further assess whether the protection of this right is ensured.

Article 7§10 – *The right of children and young persons to protection*

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

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[182] Conclusions IV (1975), Statement of Interpretation on Article 7§9 ; Conclusions 2006, Albania 1045 Conclusions 2006, Albania
[183] Conclusions VIII (1984), Statement of Interpretation on Article 7§9
[184] Conclusions XIII-1 (1993), Sweden
[185] Conclusions 2011, Estonia
[186] Conclusions XIII-2 (1994), Italy ; Conclusions 2011, Estonia

Situation in Denmark

The Government indicates that, according to the Executive Order on the Work of Young People (Article 4), young persons under the age of 18 should be given special care when choosing their work tasks, and they may not be employed in work which involves a danger to their health or safety.

It follows from Article 5 of the Executive Order that when employing young persons under the age of 18, employers must consider the physical, biological, chemical and psychological implications to which the young person may be exposed as a result of the employment, both in the short and long term.

According to the Government, it is not in accordance with Danish law for young persons under the age of 18 to be involved in the situations described in the case law – e.g. human trafficking, prostitution and corporal punishment. On the contrary, these matters are prohibited under the Danish Criminal Code.

Finally, Denmark has laid down detailed rules forbidding the employment of young persons under the age of 18 in jobs that entail a particular risk of violence. Young persons can only hold such positions if they work alongside a person aged 18 or over. This follows from Article 13 of the Executive Order on the Work of Young Persons.

ECSR interpretation (DIGEST)

Article 7§10 guarantees the right of children to be protected against physical and moral dangers within and outside the working environment.[187] This covers, in particular, the protection of children against all forms of exploitation and against the misuse of information technologies.[188] States Parties must prohibit the use of children in forms of exploitation such as sexual exploitation, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs.[189] They must also take measures to prevent and assist street children.[190] In all these cases, States Parties must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that this legislation is effective in practice.[191]

The fact that the right of children and young persons to social, legal and economic protection is guaranteed under Article 17 of the Charter does not exclude the examination of certain relevant issues relating to the protection of children under Article 7§10.[192] The issues dealt with under Article 17 include the protection of children from ill-treatment, including corporal punishment.[193] However the issue of corporal punishment is examined under Article 7§10, where a State Party has not accepted Article 17. [194]

[187] Conclusions 2004, Bulgaria
[188] Conclusions 2004, Bulgaria
[189] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, complaint No. 173/2018, decision on the merits of 26 January 2021, §185
[190] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, complaint No. 173/2018, decision on the merits of 26 January 2021, §185
[191] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, complaint No. 173/2018, decision on the merits of 26 January 2021, §176
[192] Association for the protection of All Children (APPROACH) Ltd. v. Cyprus, complaint No.97/2013, decision on admissibility of July 2013, §10
[193] Conclusions XV-2 (2001), Statement of Interpretation on Article 7§10
[194] Association for the protection of All Children (APPROACH) Ltd. v. Cyprus, complaint No.97/2013, decision on admissibility of July 2013, §10

Personal scope

Article 7§10 is applicable to foreign children in an irregular situation on the territory of a State Party to the Charter as otherwise they would not be guaranteed their fundamental rights and could be exposed to serious impairments of their rights to life, health and psychological and physical integrity.[195]

Likewise, measures should be taken to ensure the protection of unaccompanied or separated minors.[196] The failure to care for unaccompanied foreign minors present in the country and take the necessary measures to guarantee these minors the special protection against physical and moral hazards which threats their enjoyment of the most basic rights, such as the right to life, to psychological and physical integrity and to respect for human dignity.[197]

Protection against sexual exploitation

An effective policy against commercial sexual exploitation of children should cover the following three primary and interrelated forms: child prostitution, child pornography and trafficking of children.[1061]

- Child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration or any other kind of consideration.[198]
- Child pornography is given an extensive definition and takes account of the fact that new technology has changed the nature of child pornography. It includes the procurement, production, distribution, making available and possession of material that visually depicts a child engaged in sexually explicit conduct or realistic images representing a child engaged in sexually explicit conduct.[199]
- Trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.[200]

In order to guarantee the right provided by Article 7§10, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in the sex industry.[201] This prohibition must be accompanied by an adequate supervisory mechanism and sanctions.[202]

The following are minimum obligations:[203]

- Article 7§10 requires that all acts of sexual exploitation be criminalised;[204] In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts.[205] Furthermore, States Parties must criminalise the defined activities with all children under 18

[195] Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §85.
[196] Conclusions 2019, Greece
[197] European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §138 1061 Conclusions 2004, Bulgaria
[198] Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland, Complaint No. 89/2013, decision on the merits of 12 September 2014, §57
[199] Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland, Complaint No. 89/2013, decision on the merits of 12 September 2014, §57
[200] Conclusions 2004, Bulgaria; Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland, Complaint No. 89/2013, decision on the merits of 12 September 2014, §57
[201] Conclusions 2004, Bulgaria
[202] Conclusions 2004, Bulgaria
[203] Conclusions 2019, Azerbaijan
[204] Conclusions XVII-2 (2005), Poland
[205] Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland, Complaint No. 89/2013, decision on the merits of 12 September 2014, §58

years of age irrespective of lower national ages of sexual consent.[206] Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.[207]
- a national action plan combating the sexual exploitation of children should be adopted, as well as a monitoring mechanism on the sexual exploitation of children and mechanisms for collecting statistical data on the sexual exploitation of children.[208]

Other measures to prohibit and combat all forms of sexual exploitation of children include awareness raising.[209]

With regard more specifically to (un)accompanied migrant girls, these children are exposed to a heightened risk of becoming subject to sexual and gender-based violence.[210] States Parties should therefore put in place specific preventive measures to address their needs in terms of living space, privacy and security within reception centres and other accommodation facilities, taking into account their extreme vulnerability.[211] They should also provide for gender-sensitive reporting procedures and support services allowing said children to report possible cases of violence and abuse and ask for assistance in a safe manner.[212]

Protection against the misuse of information technologies

The internet is becoming one of the most frequently used tools for the spread of child pornography.[213]

With a view to combating sexual exploitation of children through the use of internet technologies States Parties must adopt measures in law and in practice, such as by providing that Internet service providers be responsible for controlling the material they host, encouraging the development and use of the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.).[214] Some States Parties have adopted a provision on “child grooming” – i.e. arranging a meeting with a child below the age of sexual consent with the intent of committing a sexual offence.[1079]

Internet services providers should be under an obligation to remove or prevent accessibility to illegal material about which they have knowledge.[215] Internet safety hotlines should be set up through which illegal material could be reported.[216]

Taking into consideration the spread of sexual exploitation of children through the means of new information technologies, States Parties should adopt measures in law and in practice to protect children from their misuse, such as unprotected access to harmful websites, audiovisual and print material.[217]

[206] Conclusions XIX-4 (2011), Croatia
[207] Conclusions XVII-2 (2005), United Kingdom
[208] Conclusions 2004, Bulgaria; Conclusions 2019, Azerbaijan
[209] Conclusions 2019, Albania
[210] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, complaint No. 173/2018, decision on the merits of 26 January 2021, §189
[211] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, complaint No. 173/2018, decision on the merits of 26 January 2021, §189
[212] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, complaint No. 173/2018, decision on the merits of 26 January 2021, §189
[213] Conclusions 2004, Bulgaria
[214] Conclusions 2004, Romania, Bulgaria 1079 Conclusions XIX-4 (2011), Poland
[215] Conclusions XIX-4 (2011), Croatia
[216] Conclusions XIX-4 (2011), Croatia
[217] Conclusions 2004, Romania

Corporal punishment

The Committee considers that the fact that the right of children and young persons to social, legal and economic protection is guaranteed under Article 17 of the Charter does not exclude the examination of certain relevant issues relating to the protection of children under Article 7§10.[218] In this connection, the Committee recalls having held the scope of the said two provisions overlap to a large extent.[219] Therefore, when States Parties have not accepted Article 17§1 of the Charter, the Committee will examine the issue relating to corporal punishment under Article 7§10.[220]

Under the Charter, the prohibition of all forms of corporal punishment of children is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not.[221] The Committee has clearly stated that all forms of corporal punishment must be prohibited in all settings and this prohibition must have an explicit legislative basis.[222] The sanctions available must be adequate, dissuasive and proportionate.[223]

Protection from other forms of exploitation

States Parties must prohibit the use of children in other forms of exploitation such as, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs.[224] They must also take measures to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas.[225]

Street children are particularly exposed to trafficking and worst forms of child labour.[226] In this respect, the Committee refers to the General Comment No. 21 of the UN Committee on the Rights of the Child which provides authoritative guidance to States on developing comprehensive, long-term national strategies on children in street situations using a holistic, child rights approach and addressing both prevention and response in line with the Convention on the Rights of the Child.[227]

States Parties must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that the measures adopted are fully effective in practice.[228]

States Parties must take measures to improve the knowledge of relevant professionals (including police officers, social workers, professionals working with children, labour inspectors, medical staff, public prosecutors, judges, the media and other groups concerned) about trafficking and the rights of victims. [229]

Opinion of the ECSR

[218] Conclusions 2019, Azerbaijan
[219] Conclusions 2019, Azerbaijan, citing Conclusions XV-2 (2001), Statement of interpretation on Article 7§10
[220] Conclusions 2019, Azerbaijan
[221] Conclusions 2019, Azerbaijan, citing General Introduction to Conclusions XV-2 (2001)
[222] Conclusions 2019, Azerbaijan; Association for the Protection of all Children (APPROACH) Ltd v. Ireland, Complaint No. 93/2013, decision on the merits of 2 December 2014, §§ 53-54
[223] Conclusions 2019, Azerbaijan, citing World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, §56
[224] Conclusions 2004, Bulgaria
[225] Conclusions 2019, Russian Federation
[226] Conclusions 2004, Romania; Conclusions 2019, Albania
[227] Conclusions 2019, Albania
[228] Conclusions 2006, Bulgaria
[229] Conclusions 2019, Serbia

As regards the situation in Denmark, the Committee notes that there are provisions to ensure special protection against physical and moral dangers to which children and young persons are exposed inside and outside the working environment.

However, the Committee does not have sufficient information on:

- the provisions in place for the protection of foreign children in an irregular situation and unaccompanied or separated minors,
- the laws, policies and other practical measures implemented to combat the exploitation of children, as well as whether there is a mechanism for monitoring and collecting data on the sexual exploitation of children exists,
- whether the measures taken to prohibit and combat all forms of exploitation of children are accompanied by an adequate supervisory mechanism and sanctions,
- the prohibition of all forms of corporal punishment of children.

On the basis of the information provided by the Government in the written report and during the meeting in Copenhagen, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider acceptance of Article 7§10 in the near future.

Article 8§2 – *The right of employed women to protection*

With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake:
2. to consider it as unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence;

Situation in Denmark

The Government indicates that the Act on Equal Treatment between Men and Women with regards to Employment[230] (hereafter the Act on Equal Treatment) implements the principle of equal treatment and the right to non-discrimination on grounds of sex as provided for in the relevant EU legislation such as the Maternity Leave Directive[231], the Recast Directive on Equal Treatment[232] and the Work-Life Balance Directive[233].

Paragraph 9 of the Act on Equal Treatment prohibits an employer from dismissing an employee or subjecting an employee to any other less favourable treatment because the employee has exercised the right to leave or has been absent in accordance with § 6-14 of the Act on Maternity Leave, has made a request for changes in accordance with paragraph 8 a, subparagraph 2 of this Act, or for any other reason connected with pregnancy, maternity or adoption.

[230] The Consolidated Act Nr. 645 of 8 June 2011 with later amendments.
[231] Directive 92/85 EC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).
[232] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).
[233] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

Thus, as explained by the Government, the prohibition of dismissal in cases where the employee has exercised the right to maternity leave or has been on maternity leave is closely linked to the grounds for dismissal and not to the dismissal itself.

Paragraph 16, subparagraph 2 of the Act on Equal Treatment stipulates that if an employee is dismissed, without the employee being reinstated, or otherwise subjected to other less favourable treatment in violation of paragraph 9, the employer must pay compensation.

Paragraph 16, subparagraph 4 of the Act on Equal Treatment provides for a reversal of the burden of proof in cases of dismissal or other less favourable treatment taking place during pregnancy leave pursuant to § 6-11, 13 and 14 of the Act on Maternity Leave, and during notice periods pursuant to § 16, subparagraph 2 of the Act on Maternity Leave. According to the information submitted, the reversal of the burden of proof means that it is the employer's responsibility to prove that the dismissal or less favourable treatment is not due to matters related to pregnancy, maternity leave or parental leave.

The Government indicates that Danish legislation is considered to fully comply with applicable EU legislation and case law regarding protection against discrimination and unfair dismissal on the grounds of pregnancy, maternity and parental leave.

Denmark considers that the requirement in Article 8§2 of the Charter is not adequately matched by the protection against dismissal which follows from the Act on Equal Treatment and Equal Opportunities Act. Denmark reads the case law of the Committee as implying that dismissal for almost any ground is prohibited during the period concerned. This is not the case in Denmark.

ECSR interpretation (DIGEST)

Prohibition of dismissal
Article 8§2 requires that it be unlawful to dismiss employees from the time they notify the employer of their pregnancy to the end of their maternity leave.[234] Article 8§2 equally applies to women on fixed-term and open-ended contracts.[235]

The notification of the dismissal, by the employer, during the period of protection does not as such amount to a violation of Article 8§2 provided that the period of notice and any procedures are suspended until the end of the leave.[236] The same rules governing suspension of the period of notice and procedures must apply in the event of notice of dismissal prior to the period of protection.[237]

However, the dismissal of a pregnant woman is not contrary to this provision in the case of serious misconduct, the cessation of the firm's activities or the expiry of a fixed-term contract.[238] These exceptions are strictly interpreted.[239] Dismissing a worker during maternity leave on other grounds, such as a collective redundancy, is not compatible with Article 8§2.[240]

[234] Conclusions XIII-4 (1996), Statement of Interpretation on Article 8§2
[235] Conclusions XIII-4 (1996), Austria
[236] Conclusions XIII-4 (1996), Statement of Interpretation on Article 8§2
[237] Conclusions XIII-4 (1996), Statement of Interpretation on Article 8§2
[238] Conclusions X-2 (1990), Spain
[239] Conclusions XXI-4 (2019), Spain
[240] Conclusions XXI-4 (2019), Spain

Redress in case of unlawful dismissal

In cases of illegal dismissal, domestic law legislation must provide for adequate and effective remedies, workers who consider that their rights in this respect have been violated must be entitled to take their case before the courts.[241]

In the case of dismissal contrary to this provision, the reinstatement of the women should be the rule.[242] Exceptionally, if this is impossible (e.g. where the enterprise closes down) or the woman concerned does not wish it, adequate compensation must be ensured.[243] Compensation should be sufficient to deter the employer and compensate the employee.[244] Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed.[245] Moreover if there is a ceiling on compensation for pecuniary damage, the victim must be able to seek unlimited compensation for non-pecuniary damage through other legal avenues and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.[246]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the measures already in place. In particular, the Committee noted that there is no absolute prohibition on dismissal during the protected period, but that there are a few exceptions.

On the basis of the information provided by the Government in the written report and during the meeting in Copenhagen, the Committee considers that there are some obstacles to the acceptance by Denmark of Article 8§2 of the Charter. It encourages the Government to continue its efforts to remove these obstacles and to consider accepting Article 8§2 in the near future.

Article 8§3 – *The right of employed women to protection*

With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake:

3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;

Situation in Denmark

According to the Government, the Act on Maternity Leave was amended as of 1 July 2022. Under the Act, expectant mothers are entitled to take 4 weeks' leave prior to the expected birth of a child, with state benefits at the same level as sick leave benefits. After the birth of the child, the mother is entitled to 42 weeks' leave. Twenty-four of these 42 weeks are with state benefits at the same level as sick leave benefits. The right to state benefits is subject to compliance with the employment criteria laid down in the Act of Maternity Leave.

Under the Act, employees have the right to request flexible working arrangements, including part-time work, upon their return from leave, and the employer must respond to such requests taking into account the needs of both the employer and the employee. Employers shall justify any refusal of such a request or any postponement of such arrangements. Reduced working

[241] Conclusions XXI-4 (2019), Spain
[242] Conclusions 2005, Cyprus; Conclusions I (1969), Statement of Interpretation on Article 8
[243] Conclusions XXI-4 (2019), Spain
[244] Conclusions 2005, Cyprus
[245] Conclusions 2011, Statement of Interpretation on Article 8§2 and Article 27§3
[246] Conclusions 2011, Statement of Interpretation on Article 8§2 and Article 27§3

hours resulting from an agreement on flexible working arrangements and the subsequent loss of income may - to a certain extent - be compensated by state benefits.

Thus, as noted by the Government, Danish legislation does not provide an explicit right for mothers to take time off to breastfeed after returning to work, but the legislation is considered to fully comply with the EU legislation and case law regarding the right to maternity and parental leave.

ECSR interpretation (DIGEST)

According to Article 8§3, all employed mothers (including domestic employees and women working at home) who breastfeed their babies shall be granted time off for this purpose.[247] Time off for nursing should in principle be granted during working hours, be treated as normal working time and remunerated as such.[248] However provision for part-time work may be considered to be sufficient where loss of income is compensated by a parental benefit or other allowance.[249] Time off for nursing must be granted at least until the child reaches the age of nine months.[250]

The Committee assesses States Parties' compliance with Article 8§3 on a case-by-case basis. The following measures have all been found to be in conformity with the Charter: two half–hour breaks where the employer provides a nursery or room for breastfeeding;[251] one–hour daily breaks[252] and legislation providing for two daily breaks for a period of one year for breastfeeding or entitlement to begin or leave work earlier.[253]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the information provided on the right of expectant mothers to maternity leave. However, Danish legislation does not guarantee working mothers who breastfeed their babies the right to take time off for this purpose. The Committee also noted that this provision would fall within the scope of collective agreements.

On the basis of the information provided by the Government in the written report and during the meeting in Copenhagen, the Committee does not consider that the absence of specific provisions on breastfeeding breaks constitutes an obstacle to Denmark's acceptance of Article 8§3 of the Charter and refers to the analogy with the situation in Sweden[254]. Therefore, the Committee considers that there appear to be no obstacles to the acceptance of Article 8§3.

Article 8§4 – *The right of employed women to protection*

With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake:

4. a) to regulate the employment of women workers on night work in industrial employment;

[247] Conclusions XVII-2 (2005), Spain
[248] Conclusions XIII-4 (1996), The Netherlands
[249] Conclusions 2005, Sweden
[250] Conclusions 2005, Cyprus
[251] Conclusions I (1969), Italy
[252] Conclusions I (1969), Germany
[253] Conclusions 2011, France
[254] Conclusions 2023, Sweden

b) to prohibit the employment of women workers in underground mining, and, as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature.

Situation in Denmark

The Government indicates that there are no specific rules on night work in industry in Denmark. Similarly, there is no gender distinction in the rules on night work. However, there are general rules protecting pregnant women in connection with night work.

The Government stresses that employers must ensure that pregnant women's night work is planned and organised in such a way that it does not pose a risk to their health or safety. This means that employers must consider that pregnant employees may need to have their working hours changed, for example, through shorter shifts, restrictions on night work or exemptions from night work. According to the Government, the regulation of working time, including night work, is largely a matter for the social partners in Denmark.

It is a legal requirement for workplaces to offer their employees a free health check before they start night work and at regular intervals thereafter, not exceeding 3 years. This applies to both women and men.

As highlighted by the Government, paragraph b is not relevant due to the absence of mining in Denmark.

For these reasons, the Government considers that the requirement in Article 8§4 of the Charter is not adequately matched by Danish rules and regulations as it appears to be irrelevant in this context.

ECSR interpretation (DIGEST)

Article 8§4 a requires States Parties to regulate the employment of women workers on night work in industrial employment, in order to limit the adverse effects on the health of the woman.

To comply with this provision, States Parties are not obliged to enact specific regulations for women if they can demonstrate the existence of regulations applying without distinction to workers of both sexes.[255] The regulations must:

- allow night workers with family responsibilities to transfer to a day work, and preclude employers from obliging such workers to move to night work;[256]
- lay down conditions for night work of pregnant women, e.g. prior authorisation by the Labour Inspectorate (when applicable), prescribed working hours, breaks, rest days following periods of night work, the right to be transferred to daytime work in case of health problems linked to night work, etc.[257]

In order to ensure non-discrimination on the grounds of gender, employed women during the protected period may not be placed in a less advantageous situation when an adjustment of their working conditions is necessary in order to ensure the required level of the protection of health.[258] In particular, in cases where women cannot be employed in their workplace due to health and safety concerns and as a result, are transferred to another post or, should such a transfer not be possible, are granted leave instead, States Parties must ensure that during the protected period, they are entitled to their average previous pay or provided with a social

[255] Conclusions X-2 (1988), Statement of Interpretation on Article 8§4
[256] Conclusions 2003, France
[257] Conclusions X-2 (1988), Statement of Interpretation on Article 8§4
[258] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5

security benefit corresponding to 100% of their previous average pay.[259] Further, women should have the right to return to their previous employment.[260] This right should be guaranteed by law.[261]

Article 8§4 b applies to all pregnant women, women who have recently given birth or who are nursing their infant, in paid employment. This provision prohibits the employment of pregnant women, women who have recently given birth and women nursing their infants in underground work in mines.[262]

This applies to extraction work proper, but not to women who:

- occupy managerial posts and do not perform manual work;
- work in health and welfare services;
- spend brief training periods in underground sections of mines.[263]

Certain other dangerous activities, such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents, must be prohibited or strictly regulated for the group of women concerned depending on the risks posed by the work.[264]

Domestic law must ensure a high level of protection against all known hazards to the health and safety of women who come within the scope of this provision.[265]

Domestic law must make provision for the re-assignment of women who are pregnant or breastfeeding if their work is unsuitable to their condition, with no loss of pay.[266] If this is not possible women should be entitled to paid leave or social security benefit corresponding to 100% of their previous average pay.[267] The employees' right to return to their previous employment at the end of their maternity/nursing period should be provided for by law.[268]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the measures in place to protect pregnant women in relation to night work. In particular, it noted that the determination of working time, including night work, is regulated through collective agreements.

The Committee has not received sufficient information on:

- details on the collective agreement regulation of night work, in particular with regard to night workers with family responsibilities.
- existing measures (legislation or collective agreements) prohibiting the employment of women workers in work which is unsuitable because of its dangerous, unhealthy or arduous nature (other than underground mining).

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider accepting Article 8§4 in the near future.

[259] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5
[260] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5
[261] Conclusions 2019, Albania
[262] Conclusions X-2 (1988), Statement of Interpretation on Article 8§5 (i.e. 8§4b) of the 1961 Charter
[263] Conclusions X-2 (1990), Statement of Interpretation on Article 8§5 (i.e. 8§4b) of the 1961 Charter
[264] Conclusions 2019, Ukraine
[265] Conclusions 2003, Bulgaria
[266] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5
[267] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5
[268] Conclusions 2019, Ukraine

Article 19§1 – *The right of migrant workers and their families to protection and assistance*

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

Situation in Denmark

The Government indicates in its report that all relevant information on rules and conditions for foreign workers to obtain residence and work permits in Denmark is available in English on the website of the immigration authorities[269].

ECSR interpretation (DIGEST)

Article 19§1 guarantees the right to free information and assistance to nationals wishing to emigrate and to nationals of other States Parties who wish to immigrate.[270] Information should be reliable and accurate and cover issues such as formalities to be completed and the living and working conditions they may expect in the country of destination (such as vocational guidance and training, social security, trade union membership, housing, social services, education and health).[271]

Free information and assistance services for migrants must be accessible in order to be effective.[272] While the provision of online resources is a valuable service, due to the potential restricted access to the Internet of migrants, other means of information are necessary, such as helplines and drop-in centres.[273] Another obligation under this provision is that States Parties must take measures to prevent misleading propaganda relating to immigration and emigration.[274] Such measures should prevent the communication of misleading information to nationals leaving the country and act against false information targeted at migrants seeking to enter.[275]

To be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as women trafficking.[276] Such measures, which should be aimed at the whole population, are necessary *inter alia* to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease.[277] In order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.[278]

[269] www.Newtodenmark.dk.
[270] Conclusions I (1969), Statement of Interpretation on Article 19§1
[271] Conclusions III (1973), Cyprus; Conclusion XV-1 (2000), Austria
[272] Conclusions 2015, Armenia; Conclusions 2019, Albania
[273] Conclusions 2015, Armenia; Conclusions 2019, Albania
[274] Conclusions XIV-1 (1998), Greece
[275] Conclusions 2019, Estonia, citing Conclusions XIV-1 (1998), Greece
[276] Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 138-140; Conclusions 2019, Albania
[277] Conclusion XV-1 (2000), Austria
[278] Conclusions 2019, Albania

States Parties must also take measures to raise awareness about misleading propaganda amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants.[279]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the detailed information available on the website of the immigration authorities, as provided in the report.

However, the website to which the Government refers contains information only on persons wishing to immigrate, yet none on assistance provided to nationals wishing to emigrate. Furthermore, apart from the provision of online resources, the Government has not provided any information on whether other means of information are available, such as helplines and drop-in centres. Finally, no information has been submitted on the evolution of migration trends and on measures taken to combat negative attitudes and prejudice, as well as misleading propaganda relating to migrant workers.

In view of the above, the Committee considers that further information is necessary to assess whether the situation in law and in practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider accepting Article 19§1 in the near future.

Article 19§2 – *The right of migrant workers and their families to protection and assistance*

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;

Situation in Denmark

The Government indicates in its report that Denmark has not yet been able to assess whether this provision could be accepted, but that an assessment would be attempted prior to the visit of the ECSR to Denmark on 10 November. However, during the ECSR meeting in Denmark, no information was provided on domestic measures in relation to this paragraph.

ECSR interpretation (DIGEST)

Article 19§2 requires States Parties to adopt special measures for the benefit of migrant workers to facilitate their departure, journey and reception.[280]

'Reception' means the period of weeks which follows immediately from their arrival, during which migrant workers and their families most often find themselves in situations of particular difficulty.[281] Special measures must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures.[282]

[279] Conclusions 2019, Albania
[280] Conclusions III (1973), Cyprus
[281] Conclusions IV (1975), Statement of interpretation on Article 19§2
[282] Conclusions IV (1975), Germany

The obligation to "provide within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey" relates to migrant workers and their families travelling either collectively or under the public or private arrangements for collective recruitment.[283] The Committee considers that this aspect of Article 19§2 does not apply to forms of individual migration for which the State is not responsible.[284] However, in that case, the need for reception facilities is all the greater.[285]

In assessing States Parties' compliance with Article 19§2, the Committee takes into consideration the following information:

- specific steps are taken in the period following the arrival of any new migrants to assist them;
- the assistance, financial or otherwise, available to all migrants in emergency situations, in particular in response to their needs of food, clothing and shelter;
- limits or restrictions on the access of working migrants to state welfare provision;
- the rules govern the access to healthcare for all migrants, irrespectively of their status, in particular in emergency.[286]

Opinion of the ECSR

As regards the situation in Denmark, the Committee notes that the Government has provided no information on this provision.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider acceptance of Article 19§2 in the near future.

Article 19§3 – *The right of migrant workers and their families to protection and assistance*

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:
3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

Situation in Denmark

The Government indicates in its report that Denmark has not yet been able to assess whether this provision could be accepted, but that an assessment would be attempted prior to the visit of the ECSR to Denmark on 10 November. However, during the ECSR meeting in Denmark, no information was provided on domestic measures in relation to this paragraph.

ECSR interpretation (DIGEST)

The scope of Article 19§3 extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State.

[283] Conclusions IV (1975), Statement of interpretation on Article 19§2
[284] Conclusions IV (1975), Statement of interpretation on Article 19§2
[285] ibid.
[286] Conclusions 2019, Armenia

Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin.[287] Formal arrangements are not always necessary, especially if there is little migratory movement in a given country.[288] In such cases, the provision of practical co–operation on a need basis may be sufficient.[289]

Common situations in which such co-operation would be useful include where the migrant worker, who has left their family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to their country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which they were employed.[290]

In order to assess States Parties' compliance with Article 19§3, the Committee takes into consideration information on:

- the form and nature of contacts and information exchanges established by social services in emigration and immigration countries;
- measures taken to establish such contacts and to promote the cooperation between social services in other countries;
- international agreements or networks, and specific examples of cooperation (whether formal or informal) which exist between the social services of the country and other origin and destination countries;
- whether the cooperation extends beyond social security alone (for example in family matters);
- examples of cooperation at a local level.[291]

Opinion of the ECSR

As regards the situation in Denmark, the Committee notes that the Government has not provided any information on this provision.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider accepting Article 19§3 in the near future.

Article 19§4 – *The right of migrant workers and their families to protection and assistance*

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:
4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

a) remuneration and other employment and working conditions;

[287] Conclusions XIV-1 (1998), Belgium
[288] Conclusions 2019, Albania
[289] Ibid.
[290] Conclusions XV-1 (2000), Finland
[291] Conclusions 2019, Albania

b) membership of trade unions and enjoyment of the benefits of collective bargaining;

c) accommodation;

Situation in Denmark

The Government indicates in its report that Denmark has not yet been able to assess whether this provision could be accepted, but that an assessment would be attempted prior to the visit of the ECSR to Denmark on 10 November. However, during the ECSR meeting in Denmark, no information was provided on domestic measures in relation to this paragraph.

ECSR interpretation (DIGEST)

Scope
States Parties are required to prove the absence of discrimination, whether direct or indirect, in terms of law and practice, and should inform of any practical measures taken to remedy cases of discrimination.[292] Equality in law does not always and necessarily ensure equality in practice.[293] Hence, additional action becomes necessary owing to the different situation of migrant workers as compared with nationals.[294] States Parties should pursue a positive and continuous course of action providing for more favourable treatment of migrant workers.[295]

Article 19§4 also applies to posted workers, i.e. workers who, for a limited period, carry out their work in the territory of a State other than the State in which they usually work.[296] States must respect the principles of non-discrimination laid down by the Charter in respect of all persons subject to their jurisdiction.[297] States Parties are also responsible for the regulation in national law of the conditions and rights of workers in cross-border postings.[298]

Remuneration and other employment and working conditions

Under Article 19§4(a), States Parties are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion as well as vocational training.[299]

Membership of trade unions and enjoyment of the benefits of collective bargaining

Article 19§4(b) requires States Parties to eliminate all legal and de facto discrimination concerning trade union membership and as regards the enjoyment of the benefits of collective bargaining, including the right to be founding member and access to administrative and managerial posts in trade unions.[300]

Applying the principle of non-discrimination, as set out in Article 19§4(b) of the Charter, to the context of collective bargaining, requires States Parties to take action to ensure that migrant workers enjoy equal treatment when it comes to benefiting from collective agreements aimed at implementing the principle of equal pay for equal work for all workers in the workplace, or

[292] Conclusions III (1973), Statement of Interpretation on Article 19§4
[293] Conclusions V (1977), Statement of interpretation on Article 19
[294] Ibid.
[295] Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on the merits of 3 July 2013, §133
[296] Conclusions 2015, Statement of interpretation on Article 19§4
[297] Ibid.
[298] Ibid.
[299] Conclusions VII (1981), United Kingdom; Conclusions 2019, Albania
[300] Conclusions XIII-3 (1995), Turkey; Conclusions 2011, Statement of interpretation on Article 19§4b; Conclusions XIX-4 (2011), Luxembourg

from legitimate collective action in support of such an agreement, in accordance with domestic laws or practice.[301]

Excluding or limiting the right to collective bargaining or action with respect to foreign undertakings, for the sake of enhancing free cross border movement of services and advantages in terms of competition within a common market zone, constitutes discriminatory treatment on the ground of nationality of the workers.[302] This is because it determines, in the host State, lower protection and more limited economic and social rights for posted foreign workers, in comparison with the protection and rights guaranteed to all other workers.[303]

Accommodation

The undertaking of States Parties under this sub-heading is to eliminate all legal and de facto discrimination concerning access to public and private housing.[304] Irregularly present immigrants, however, do not fall within the scope of Article 19§4(c).[305]

There must be no legal or de facto restrictions on home–buying,[306] access to subsidised housing or housing aids, such as loans or other allowances.[307] The right to equal treatment provided in Article 19§4(c) can only be effective if there is a right of appeal before an independent body against the relevant administrative decisions.[308] The economic obstacles to achieving full provision of social housing to those eligible do not provide a valid reason to discriminate against nationals of non-EU States.[309]

Monitoring and judicial review

It is not enough for a government to demonstrate that no discrimination exists in law alone; it is obliged to demonstrate that it has taken adequate practical steps to eliminate all legal and de facto discrimination concerning the rights secured by Article 19§4 of the Charter.[310]

To monitor and ensure that no discrimination occurs in practice, States Parties should have in place sufficient effective monitoring procedures or bodies to collect information, for example disaggregated data on remuneration or information on cases in employment tribunals.[311]

Under Article 19§4(c), equal treatment can only be effective if there is a right of appeal before an independent body against the relevant administrative decision.[312] The Committee considers that existence of such review is important for all aspects covered by Article 19§4.[313]

Opinion of the ECSR

[301] Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on the merits, 3 July 2013, §140
[302] Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on the merits, 3 July 2013, §141
[303] Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on the merits, 3 July 2013, §141
[304] European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §§ 111-113; Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 145- 147 (finding of violation of Article E taken in conjunction with Article 19§4c)
[305] European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §§ 111-113; Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 145- 147 (finding of violation of Article E taken in conjunction with Article 19§4c)
[306] Conclusions IV (1975), Norway; Conclusions 2019, Albania
[307] Conclusions III (1973), Italy; Conclusions 2019, Albania
[308] European Federation of national organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §204, citing Conclusions XV-1 (2000), Finland
[309] Conclusions 2015, Slovenia
[310] Conclusions III (1973), Statement of interpretation on Article 19§4; Conclusions 2019, Albania
[311] Conclusions XX-4 (2015), Germany; Conclusions 2019, Albania
[312] Conclusions XV-1 (2000), Finland
[313] Conclusions 2019, Albania

As regards the situation in Denmark, the Committee notes that the Government has not provided any information on this provision.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider accepting Article 19§4 in the near future.

Article 19§5 – *The right of migrant workers and their families to protection and assistance*

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:
5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;

Situation in Denmark

The Government indicates in the written information submitted in August 2023 that Denmark has not yet been able to assess whether this provision could be accepted, but an assessment would be attempted prior to the visit of the ECSR to Denmark on 10 November. However, during the ECSR meeting in Denmark, no information was provided on domestic measures in relation to this paragraph.

ECSR interpretation (DIGEST)

Article 19§5 recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions.[314] This includes contributions such as mandatory pension payments, unemployment insurance payments and social insurance contributions derived from employment.[315]

The Committee found situations to be in non-conformity with the Charter where non-residents who are cross-border workers are not entitled to personal income tax allowances (for dependant persons and additional allowances of personal income tax)[316] or to supplementary financial benefits.[317]

Opinion of the ECSR

As regards the situation in Denmark, the Committee notes that the Government has provided no information on this provision.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider accepting Article 19§5 in the near future.

Article 19§6 – *The right of migrant workers and their families to protection and assistance*

[314] Conclusions 2019, Albania, citing Conclusions XIX-4 (2011), Greece
[315] Conclusions 2019, Austria
[316] Conclusions 2015, Latvia
[317] Conclusions XX-4 (2015), Poland

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:
6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

Situation in Denmark

The Government indicates in its report that Denmark has several work-related schemes, under which foreign workers can apply for a residence and work permit depending on the nature of the planned activity in Denmark. The Danish Aliens Act includes provisions allowing foreign workers to be accompanied by their family members.

ECSR interpretation (DIGEST)

Appendix: For the purpose of applying this provision, the term "family of a foreign worker" is understood to mean at least the worker's spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker.[318]

Scope

Article 19§6 requires States Parties to allow the families of migrants legally established in State Party territory to join them.[319] The worker's children entitled to family reunion are those who are dependent, unmarried, and who fall under the legal age of majority in the receiving State.[320] "Dependent" children are understood as being those who have no independent existence outside the family group, particularly for economic or health reasons, or because they are pursuing unpaid studies.[321]

Where the national legislation prescribes a lower age, it suffices in practice that applications for reunion in respect of children up to 21 years of age should be generally accepted.[322] Where children aged 18 to 21 are not only disqualified in law from family reunion but also denied it in practice, the Committee assesses the proportion of children aged 18 to 21 refused family reunion.[323]A high proportion of children aged 18 to 21 refused family reunion leads to a finding of non-conformity with Article 19§6 in this respect.[324]

Conditions governing family reunion

States Parties should not adopt a blanket approach to the application of relevant requirements, so as to preclude the possibility of exemptions being made in respect of particular categories of cases, or for consideration of individual circumstances.[325]

The Covid-19 pandemic has in some cases led to the separation of migrant workers and their families for extended periods, for example due to closure of borders, travel restrictions and quarantine requirements or due to fear of job loss in case of travel.[326] Article 19§6 requires

[318] Appendix to the Revised European Social Charter, European Treaty Series - No. 163
[319] Conclusions 2019, Albania
[320] Appendix to the Revised European Social Charter, European Treaty Series - No. 163
[321] Conclusions VIII (1984) Statement of Interpretation on Article 19§6
[322] Conclusions XVI-1 (2002), The Netherlands
[323] Conclusions XVI-1 (2002), The Netherlands
[324] Conclusions XVI-1 (2002), The Netherlands
[325] Conclusions 2019, Albania, citing Conclusions 2015, Statement of Interpretation on Article 19§6 – housing requirements
[326] Statement on Covid-19 and social rights adopted on 24 March 2021

States Parties to facilitate family reunion as far as possible and refers to the possibility for the States Parties to take extraordinary measures to avoid separation of families during the pandemic.[327]

i. Refusal on health grounds

States Parties may not deny entry to their territory for the purpose of family reunion to a family member of a migrant worker for health reasons. A refusal on this ground may only be admitted for specific illnesses which are so serious as to endanger public health.[328] These are the diseases requiring quarantine which are stipulated in the World Health Organisation's International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis.[329] Very serious drug addiction or mental illness may justify refusal of family reunion, but only where the authorities establish, on a case-by-case basis, that the illness or condition constitutes a threat to public order or security.[330]

ii. Length of residence

States Parties may require a certain length of residence of migrant workers before their family can join them. A period of one year is acceptable under the Charter, but a longer period is considered excessive.[331] Thus, for example, a period of eighteen months or more is not in conformity with this provision of the Charter.[332]

iii. Housing condition

The requirement of having sufficient or suitable accommodation to house the family or certain family members as a precondition for its admission to a State Party should not be so restrictive as to prevent family reunion.[333] States are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family.[334] Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.[335]

iv. Means requirement

The level of means required by States Parties to bring in a migrant worker's family or certain family members should not be so restrictive as to prevent any family reunion.[336] Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion.[337]

v. Language and/or integration tests

States may take measures to encourage the integration of migrant workers and their family members, such measures being important in promoting economic and social cohesion.[338]

However, requirements that family members pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may

[327] Statement on Covid-19 and social rights adopted on 24 March 2021
[328] Conclusions XVI-1 (2002), Greece
[329] Conclusions XV-1 (2000), Finland
[330] Conclusions XV-1 (2000), Finland
[331] Conclusion 2011, Statement of Interpretation on Article 19§6
[332] Conclusions I (1969), Germany; Conclusions 2011, France; Conclusions 2011, Cyprus
[333] Conclusions IV (1975), Norway
[334] Conclusions 2015, Statement of interpretation on Article 19§6 – housing requirements
[335] Conclusions 2015, Statement of interpretation on Article 19§6 – housing requirements
[336] Conclusions XVII-1 (2004), The Netherlands
[337] Conclusions 2011, Statement of Interpretation on Article 19§6
[338] Conclusions 2015, Statement of Interpretation on Article 19§6 – language and integration tests

impede rather than facilitate family reunion.[339] They are therefore contrary to Article 19§6 of the Charter where they:

- have the potential effect of denying entry or the right to remain to family members of a migrant worker, or
- otherwise deprive the right guaranteed under Article 19§6 of its substance, for example by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments.[340]

Independent right to stay

Even where the requirements for the expulsion of a migrant worker are met under Article 19§8, the members of the worker's family who are in the territory of the receiving State should not be deported as consequence of the migrant worker's expulsion.[341] The right to family reunion provided for in Article 19§6 must be regarded as conferring on each of its beneficiaries a personal right of residence distinct from the original right held by the migrant worker.[342]

The conformity of the expulsion of family members of a migrant worker with the Charter is assessed under Article 19§6.[343]

Remedies

Restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness.[344]

Opinion of the ECSR

As regards the situation in Denmark, the Committee notes that, apart from referring to the Danish Aliens Act, the Government has not provided any information on the right, in law and practice, of foreign workers to be reunited with their family members.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider accepting Article 19§6 in the near future.

Article 19§7 – *The right of migrant workers and their families to protection and assistance*

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:
7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;

Situation in Denmark

[339] Conclusions 2015, Statement of Interpretation on Article 19§6 – language and integration tests
[340] Conclusions 2015, Statement of Interpretation on Article 19§6 – language and integration tests
[341] Conclusions XVI-1 (2002), The Netherlands, Article 19§8
[342] Conclusions XVI-1 (2002), The Netherlands, Article 19§8
[343] Conclusions 2015, Statement of interpretation on Article 19§6 and 19§8
[344] Conclusions 2015, Statement of interpretation on Article 19§6 – housing requirements

In the written information submitted in August 2023, the Government states the following:

General access to the Danish Courts

According to the information provided, a civil claim may - under certain preconditions - be pursued by instituting proceedings before the Danish courts. In order to bring an action before the courts, a person must have a legal interest. The plaintiff is considered to have a legal interest if his/her claim is legal and can be assessed according to the law, if his/her claim is of current interest and if he/she has a concrete interest in the case.

In addition, all decisions by the immigration authorities relating to the right to reside in Denmark as a worker can be appealed to the Immigration Appeals Board, which is an independent administrative body. A decision by the Immigration Appeals Board can be challenged in the Danish Courts.

Access to the industrial dispute procedure

As explained by the Government, access to the industrial dispute procedure in Denmark is generally reserved for trade unions, employers organisations or employers who are not members of an employers' organisation. Danish nationals and foreign workers have the same rights as regards membership of a Danish trade union and, accordingly, access to the industrial dispute procedure and the Danish Labour Courts.

ECSR interpretation (DIGEST)

Under this provision States Parties must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals.[345] This obligation applies to all legal proceedings concerning the rights guaranteed by Article 19 (i.e. pay, working conditions, housing, trade union rights, taxes).[346]

More specifically, any migrant worker residing or working lawfully within the territory of a State Party who is involved in legal or administrative proceedings and does not have counsel of their own choosing should be advised that they may appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if they do not have sufficient means to pay the latter, as is the case for nationals or should be by virtue of the Charter.[347] Under the same conditions (involvement of a migrant worker in legal or administrative proceedings), whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter if they cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated.[348] Such legal assistance should be extended to obligatory pre-trial proceedings.[349]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the information provided on the right of migrant workers to appeal to the Immigration Appeals Board against all decisions of the immigration authorities relating to their right of residence in Denmark, as well as their right of access to the industrial dispute procedure and to the Danish Labour Courts under the same conditions as Danish nationals.

However, no information has been provided on whether migrant workers:

[345] Conclusions I (1969), Italy, Norway, United-Kingdom; Conclusions I (1969), Germany; Conclusions 2019, Albania
[346] Conclusions I (1969), Germany
[347] Conclusions 2011, Statement of Interpretation on Article 19§7
[348] Ibid.
[349] Ibid.

- have access to courts, lawyers and legal aid under the same conditions as Danish nationals in all legal proceedings concerning the rights guaranteed by Article 19 of the Charter (i.e. pay, working conditions, housing, taxes).
- are advised that they may appoint a counsel and are provided with a counsel free of charge if they do not have sufficient means to pay for one, as is the case for Danish nationals.
- have the right to free assistance of an interpreter if they cannot properly understand or speak the national language used in the proceedings, and to free translation of necessary documents.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider accepting Article 19§7 in the near future.

Article 19§8 – *The right of migrant workers and their families to protection and assistance*

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

Situation in Denmark

In the written information submitted in August 2023, the Government indicates that the rules on expulsion in the Danish Aliens Act do not distinguish between immigrants in general and foreign workers.

Sections 22-24 of the Danish Aliens Act lay down the rules for expulsion when an alien has been convicted of a criminal offence. As a main rule, expulsion depends on the length of the alien's stay in Denmark and the seriousness of the crime committed. The national courts decide whether there are grounds for an expulsion order on the basis of an individual assessment in connection with the criminal proceedings.

Furthermore, according to the Government, it follows from Section 25(1) of the Danish Aliens Act that an alien can be expelled if he or she represents a danger to national security. The decision is made by the Ministry of Immigration and Integration and may be challenged in court in accordance with Chapter 7 of the Danish Aliens Act. It also follows from Section 25(2) of the same Act that an alien may be expelled if he or she represents a serious threat to public order, safety or health. The decision is made by the Danish Immigration Service with the right to appeal to the Immigration Appeals Board. In addition, Sections 25-25b of the Danish Aliens Act contain rules on the expulsion of aliens who have been legally resident in Denmark for less than six months. These rules are aimed, among other things, at criminality and illegal stay/work in cases which have been settled with a fine. These decisions are made by the Danish Immigration Service, with the right to appeal to the Immigration Appeals Board.

All decisions on expulsion must be made within the framework of Denmark's international obligations, as noted by the Government.

ECSR interpretation (DIGEST)

Article 19§8 requires States Parties to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality.[350]

In cases where a fundamental right such as the right of residence is at stake, the burden of proof rests with the Government: to demonstrate that a person does not reside legally on its territory.[351]

Such expulsions can only be in conformity with the Charter if they are ordered by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review.[352] Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality.[353] Expulsion orders must be proportionate, taking into account all aspects of the individual's behaviour as well as the circumstances and the length of time of their presence in the territory of the State.[354] The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that they may have formed during this period, must also be considered to determine whether expulsion is proportionate.[355]
Risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment.[356]

The fact that a migrant worker is dependent on social assistance cannot be regarded as a threat against public order and cannot constitute a ground for expulsion.[357]

States Parties must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body.[358]

Collective expulsions are not in conformity with the Charter; decisions on expulsion may be made only on the basis of a reasonable and objective examination of the particular situation of each individual.[359]

National legislation should reflect the legal implications of Articles 18§1 and 19§8 as well as the case law of the European Court of Human Rights: foreign nationals who have been resident for a sufficient length of time in a State, either legally or with the tacit acceptance of their illegal status by the authorities in view of the host country's needs, should be covered by the rules protecting from deportation.[360]

Opinion of the ECSR

[350] Conclusions VI (1979), Cyprus; Conclusions 2011, Statement of Interpretation on Article 19§8; Conclusions 2015, Statement of interpretation on Article 19§8
[351] *Médecins du Monde* - International v. France, Complaint No. 67/2011, decision on the merits of 11 September 2012, §114
[352] Conclusions 2015, Statement of interpretation on Article 19§8
[353] Conclusions 2015, Statement of interpretation on Article 19§8
[354] Conclusions 2015, Statement of interpretation on Article 19§8
[355] Conclusions 2015, Statement of interpretation on Article 19§8
[356] Conclusions V (1977), Germany
[357] Conclusions V (1977), Italy
[358] Conclusions V (1977), United Kingdom; Conclusions 2015, Statement of interpretation on Article 19§8
[359] Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 155-158, Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011, §§ 68-79; European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011, decision on the merits of 24 January 2012, §§ 51-67; *Médecins du Monde* - International v. France, Complaint No. 67/2011, decision on the merits of 11 September 2012, §§ 112-117
[360] Conclusions 2011, Statement of Interpretation on Article 19§8

As regards the situation in Denmark, the Committee notes that there are provisions in place ensuring the right of all immigrants not to be expelled unless they pose a threat to national security or offend against public interest or morality.

However, the Government has not provided any information as to whether the person's connection or ties to both the host country and the country of origin, as well as the strength of any family relationships that they may have formed during that period, are considered when determining whether the expulsion is proportionate.

Nonetheless, in the light of the information provided by the Government and the requirements of this provision, the Committee considers that there appear to be no obstacles to the immediate acceptance of Article 19§8.

Article 19§9 – *The right of migrant workers and their families to protection and assistance*

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

Situation in Denmark

The Government provided no information on Article 19§9 of the Charter in the report submitted in August 2023.

ECSR interpretation (DIGEST)

This provision obliges States Parties not to place excessive restrictions on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country.[361]

The right to transfer earnings and savings includes the right to transfer movable property (including money).[362]

Opinion of the ECSR

As regards the situation in Denmark, the Committee notes that the Government has not provided any information on this provision.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider accepting Article 19§9 in the near future.

Article 19§10 – *The right of migrant workers and their families to protection and assistance*

[361] Conclusions XIII-1 (1993), Greece
[362] Conclusions 2011, Statement of Interpretation on Article 19§9

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:
10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply.

Situation in Denmark

The Government has not provided any information on Article 19§10 of the Charter in the report submitted in August 2023.

ECSR interpretation (DIGEST)

Under Article 19§10, States Parties must extend the rights provided for in paragraphs 1 to 9, 11 and 12 to self-employed migrant workers and their families.[363]
States Parties must ensure that there is no unjustified treatment which amounts to discrimination, in law or in practice between wage-earners and self-employed migrants.[364] In addition equal treatment between self-employed migrants and self-employed nationals must be guaranteed in the areas covered by this provision.[365]

A finding of non-conformity with regard to any of the other paragraphs of Article 19 ordinarily leads to a finding of non-conformity under Article 19§10, because the same grounds for non-conformity also apply to self-employed workers.[366] Such finding of non-conformity prevents discrimination or difference in treatment.[367]

As this provision relates solely to extending the protection and assistance embodied in the other paragraphs of Article 19 to self-employed workers, it is important that the following comments should be considered not in isolation, but together with those made on each of the other paragraphs of Article 19. Hence, any statement that a particular state has fulfilled its obligations deriving from Paragraph 10 is valid only in so far as the Committee has been able to reach a like conclusion in respect of the other paragraphs also.[368]

Opinion of the ECSR

As regards the situation in Denmark, the Committee notes that the Government has not provided any information on this provision.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider accepting Article 19§10 in the near future.

[363] Conclusions I (1969), Norway
[364] Conclusions 2002, France
[365] Conclusions XVIII-1 (2006) Luxembourg
[366] Conclusions 2019, Albania
[367] Ibid.
[368] Statement of interpretation on Article 19§10

III. EXAMINATION OF CERTAIN PROVISIONS OF THE REVISED EUROPEAN SOCIAL CHARTER[369]

Article 2§3 – *The right to just conditions of work*
With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

3. to provide for a minimum of four weeks' annual holiday with pay;

Situation in Denmark

The Government indicates that Denmark has ratified the provision in the original Charter, whereas the revised Charter increases the paid annual leave from 2 to 4 weeks.

According to the Danish Holiday Act, all employees, regardless of their occupation, are entitled to five weeks' paid holiday per year. Four of the weeks cannot be replaced by a cash allowance in the current employment relationship.

The Government states that an employee who falls ill before the holiday has the right to take it at a later date. An employee who falls ill during the holiday is entitled to compensatory leave after up to 5 sick days, depending on the duration of employment. The employee is thereby guaranteed 4 weeks of paid holiday per year.
These rules apply even if the holiday is covered by a collective holiday closure. If an employee is unable to take the holiday before the end of the holiday period due to illness, maternity or any other prescribed holiday impediment, the holiday is carried over to the subsequent holiday period.

According to the Government, additional rights concerning extra leave can be agreed upon by the social partners.
Finally, the Government states that seafarers' holiday rights follow the Danish Holiday Act.

ECSR interpretation (DIGEST)

Article 2§3 guarantees the right to a minimum of four weeks (or 20 working days) annual holiday with pay.
The taking of annual holiday may be subject to the requirement that the twelve working months for which it is due have fully elapsed.[370]

Annual leave may not be replaced by financial compensation and employees must not have the option of giving up their annual leave.[371] This principle does not prevent however the payment of a lump sum to an employee at the end of their employment in compensation for the paid holiday to which they were entitled but which they had not taken.[372]

At least two weeks uninterrupted annual holidays must be used during the year the holidays were due.[373] The fact that not all employees have the right to take at least two weeks of uninterrupted holiday during the year is a ground for non-conformity.[374] Annual holidays

[369] Provisions accepted by Denmark in the 1961, but which were amended in the revised Charter, as well as new provisions introduced by the revised Charter.
[370] Conclusions I (1969) Statement of interpretation on Article 2§3
[371] Conclusions I (1969), Ireland
[372] Conclusions I (1969) Statement of interpretation on Article 2§3
[373] Conclusions 2007, Statement of interpretation on Article 2§3
[374] Conclusions XXI-3 (2018), Spain

exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement.[375]

Allowing all annual leave to be carried over to the following year is not in conformity with Article 2§3 of the Charter.[376]

Workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time so that they receive the four week annual holiday provided for under this paragraph.[377] This requirement applies in all cases, whether the incapacity commences before or during the holiday period, as well as in cases of employment in which there is a fixed holiday period for all workers in an enterprise.[378] Imposing a condition requiring the employee to notify their employer immediately and provide a medical certificate is compatible with Article 2§3 of the Charter.[379]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the measures already in place and considers that Denmark is in a position to accept this provision of the revised Charter immediately.

Article 2§4 – *The right to just conditions of work*

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;

Opinion of the ECSR

See page 13 -14 of the current report.

Article 2§6 – *The right to just conditions of work*
With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:
6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

Situation in Denmark

The Government indicates that the purpose of this provision is to ensure that employees are informed of the essential aspects of their employment. According to the information submitted, Denmark requires that workers are informed in writing of the essential aspects of the contract or employment relationship no later than seven days after the start of their employment. In some cases, further detailed information must be given to the employee no later than one month after the beginning of the employment relationship.

[375] Conclusions 2007, Statement of interpretation on Article 2§3
[376] Conclusions 2018, Russian Federation
[377] Conclusions XII-2 (1992), Statement of Interpretation on Article 2§3
[378] Conclusions XII-2 (1992), Statement of Interpretation on Article 2§3
[379] Conclusions 2014, Austria

Seafarers' right to a written contract is enshrined in the ILO's Maritime Labour Convention, which Denmark has ratified and implemented.

ECSR interpretation (DIGEST)

Article 2§6 guarantees the right of workers to written information when starting employment. This information can be included in the employment contract or any other mandatory documents given to workers upon recruitment (employers' and employees' rights and obligations, collective contracts or company regulations, official appointment orders, pay statement, collective agreement, post descriptions, etc.).[380]

This information must at least cover essential aspects of the employment relationship or contract, i.e. the following:

- the identities of the parties;
- the place of work;
- the date of commencement of the contract or employment relationship;
- in the case of a temporary contract or employment relationship, the expected duration thereof;
- the amount of paid leave;
- the length of the periods of notice in case of termination of the contract or the employment relationship;
- the remuneration;
- the length of the employee's normal working day or week;
- where appropriate, a reference to the collective agreements governing the employee's conditions of work.[381]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the measures already in place and considers that Denmark is in a position to accept this provision. The Committee considers that there appear to be no obstacles to the immediate acceptance of Article 2§6.

Article 2§7 – *The right to just conditions of work*

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Situation in Denmark

The Government indicates in its report that Denmark expressed reservations about this provision when signing the revised Charter and that the definition of night work is left to national law or practice.

According to the Government, night work is a natural part of seafarers' working conditions. During the voyage, it may not be possible to allow seafarers to benefit from special measures as these may affect the rights of other seafarers or the voyage. Furthermore, the Government submits that it is unclear what such measures could be in relation to this provision.

[380] Conclusions 2014, Republic of Moldova; Conclusions 2018, Ukraine
[381] Conclusions 2003, Bulgaria

ECSR interpretation (DIGEST)

Article 2§7 guarantees compensatory measures for persons performing night work. Domestic law or practice must define what is considered to be "night work" within the context of this provision, namely what period is considered to be "night" and who is considered to be a "night worker".[382]

The measures which take account of the special nature of the work must at least include the following:

- regular medical examinations, including a check prior to employment on night work;[383]
- the provision of possibilities for transfer to daytime work;[384]
- continuous consultation with workers' representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.[385]

Lack of provision in legislation for workers assigned to night work to be given a compulsory medical check-up prior to taking up their duties or regular check-ups thereafter is a ground of non-conformity with Article 2§7.[386] Such medical examination should be provided free of charge.[387]

Failure to regularly consult employee representatives on the conditions relating to night work and on measures taken to reconcile employees' needs and the special nature of night work is a ground of non-conformity under Article 2§7.[388]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the information provided in the report and during the meeting in Copenhagen.

However, the Committee notes that it did not have sufficient information on:

- the definition of 'night' and 'night worker' in Danish law and practice.
- the measures taken for persons performing night work, which take account of the specific nature of their work (e.g. regular medical examinations, possibilities of transfer to daytime work, consultation with workers' representatives).

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider accepting Article 2§7 in the near future.

Article 3§1 – *The right to safe and healthy working conditions*

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

[382] Conclusions 2014, Bulgaria; Conclusions 2018, Georgia
[383] Conclusions 2003, Romania
[384] Conclusions 2003, Romania
[385] Conclusions 2003, Romania
[386] Conclusions 2018, Andorra
[387] Conclusions 2018, Bosnia and Herzegovina
[388] Conclusions 2018, North Macedonia

1. to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;

Situation in Denmark

The Government indicates in the written information submitted in August 2023 that this provision requires that contracting parties formulate a coherent occupational health and safety policy.

According to the information submitted, this condition already follows from ILO Convention No. 187 on the Promotional Framework for Safety and Health at Work (2006), where each Contracting Party shall promote a safe and healthy working environment by formulating a national policy. The national policy on occupational safety and health shall be developed in accordance with the principles set out in Article 4 of the ILO Occupational Safety and Health Convention, No. 155 (1981).

In Denmark, there is a long-standing practice that when an existing health and safety policy expires, it is replaced by a new one. This is the case, according to the Government (e.g. political agreements on occupational safety and health).

For seafarers, the Government states that similar requirements can be derived from the ILO's Maritime Labour Convention which Denmark has ratified and implemented.

ECSR interpretation (DIGEST)

In Article 3§1, States Parties undertake to formulate, implement and periodically review a coherent occupational health and safety policy in consultation with social partners.[389]
Under Article 3§1 such a policy must include strategies for making occupational risk prevention an integral aspect of the public authorities' activity at all levels.[390] To comply with this provision States must ensure the following:

- the assessment of work-related risks and introduction of a range of preventive measures taking account of the particular risks concerned. The effectiveness of those measures must be monitored, and information and training for employees must be provided. Within individual firms, occupational risk prevention means more than simply applying regulations and remedying situations that have led to occupational injuries;[391]
- the development of an appropriate public monitoring system – often a responsibility for the labour inspectorate – to maintain standards and ensure they apply in the workplace;[392]
- the establishment and further development of programmes in areas such as: training (qualified staff); information (statistical systems and dissemination of knowledge); quality assurance (professional qualifications, certification systems for facilities and equipment); and, where appropriate, research (scientific and technical expertise).[393]

[389] Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular Conclusions 2003, Bulgaria
[390] Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular Conclusions 2003, Bulgaria
[391] Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular Conclusions 2003, Bulgaria
[392] Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular Conclusions 2003, Bulgaria
[393] Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular Conclusions 2003, Bulgaria

General objective of national policy

The main policy objective must be to foster and preserve a culture of prevention in respect of occupational health and safety at national level.[394]

Occupational risk prevention must be a priority. It must be incorporated into the public authorities' activities at all levels and in all areas, for example in respect of employment, disability, equal opportunities and gender.[395] In order to assess the proper implementation of Article 3§1, the Committee takes into account the following indicators:

- the implementation of the ILO Occupational Health and Safety Convention No. 155 (1981);[396]
- the implementation of the ILO Convention No. 187 on the Promotional Framework for Safety and Health at Work (2006);[397]
- the transposition of Directive 89/391EEC of the European Parliament and of the Council of 12 June 1989 on the implementation of measures to promote improvements in the safety and health of workers at work, amended by Directive 2007/30/EC of the European Parliament and of the Council of 20 June 2007;[398] and
- the implementation, where appropriate, of the European Union's strategic framework for health and safety at work 2014-2020 (COM(2014)0332).

The policies and strategies adopted must be regularly assessed and reviewed, particularly in the light of changing risks.[399]

Organisation of occupational risk prevention

A culture of prevention implies that all the partners – authorities, employers and workers – are actively involved in occupational risk prevention, working within a well-defined framework of rights and duties and predetermined structures. The main aspects are:

- in respect of companies: besides compliance with protective rules, the assessment of work-related risks and the adoption of preventive measures geared to the nature of risks as well as information and training for workers.[400] Special attention should be given to some sectors of activity (construction; agriculture; fishing; forestry; metalworks, mining, etc.), some enterprises (small and medium-sized) and special forms of employment (interim; fixed-term; temporary; seasonal), which are particularly exposed. Concerning special forms of employment, employers and/or users are required to provide appropriate information, training and medical supervision, so as to take account of exposure to occupational risks while working for different employers;[401]
- the principal aspect of labour inspection covered by Article 3§1 is the duty of inspectors, as part of information, training and prevention activities, to share the knowledge about risks and risk prevention acquired during inspections and investigations.[402]

[394] Conclusions 2009, Armenia
[395] Conclusions 2005, Lithuania; Conclusions 2009, Armenia
[396] Conclusions 2013, Albania
[397] Conclusions 2013, Austria
[398] Conclusions 2013, Albania
[399] Conclusions 2005, Lithuania
[400] Conclusions 2009, Armenia
[401] Conclusions XIV-2 (1998), Statement of Interpretation on Article 3
[402] Conclusions 2009, Malta

Improvement of occupational health and safety (research and training)

Public authorities must, to increase general awareness, knowledge and understanding of the concepts of danger and risk, as well as of ways of preventing and managing them, participate in the following activities:[403]

- training (qualified staff);
- information (statistical systems and dissemination of knowledge);
- quality assurance (professional qualifications, certification systems for facilities and equipment);
- research (scientific and technical expertise).

Consultation with employers' and workers' organisations

When devising and implementing national policies and strategies chosen by the relevant authorities, consultation with employers' and workers' organisations, must take place at the national, sectoral and company levels.[532]

Article 3§1 requires consultation not only for tripartite co-operation between authorities, employers and workers to seek ways of improving their working conditions and working environment.[404] It also requires consultation for the co-ordination of activities of authorities, employers and workers, and co-operation on key safety and prevention issues.[405]

Mechanisms and procedures of consultation with employers' and workers' organisations must be set up at national and sectoral level.[406] The right to consultation is satisfied where there are specialised bodies made up of representatives of the government and of employers' and workers' organisations, which are consulted by the public authorities.[407] These consultations may take place on either a permanent or *ad hoc* basis but they must in either case be efficient with regard to promoting social dialogue on occupational safety and health matters.[408]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the information provided in the report.

However, the Government has not provided information on, *inter alia*:

- how work-related risks are assessed and what preventive measures have been introduced, taking into account the particular risks involved,
- whether the effectiveness of such measures is monitored, and whether information and training are provided to employees,
- whether an appropriate public monitoring system has been developed,
- whether the prevention of occupational risks is incorporated into the activities of public authorities at all levels and in all areas,
- whether the policies and strategies adopted are regularly assessed and reviewed,
- whether consultation with employers' and workers' organisations takes place in this area,
- how the relevant ILO Conventions and EU instruments have been implemented in Danish law and practice.

[403] Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular Conclusions 2003, Bulgaria 532 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3
[404] Conclusions 2017, Ukraine
[405] Conclusions 2017, Ukraine
[406] Conclusions 2017, Albania
[407] Conclusions 2017, Ukraine
[408] Conclusions 2009, Lithuania; Conclusions 2017, Ukraine

In view of these requirements, the Committee considers that further information on the existing national policy on occupational safety and health and the working environment is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. The Committee encourages the Government to continue its efforts and to consider accepting Article 3§1 of the revised Charter in the near future.

Article 3§4 – *The right to safe and healthy working conditions*

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

Situation in Denmark

The Government states in its report that, according to the Appendix, the rules for the functioning, organisation and working conditions of the health services are set at the national level.

The report explains that there are seven occupational health clinics in Denmark with specialised departments, including specialist doctors, in hospitals throughout the country – all part of the public hospital system. An employee may be referred to an occupational health clinic by a doctor, a trade union or the occupational health and safety organisation. Occupational health clinics also provide advice to employees, for example on preventive measures, as part of the examination. Being examined and assessed at an occupational health clinic is free of charge for the employee. It is based on a medical assessment and falls within the scope of the doctor's responsibility for examination and treatment under health legislation to assess the need for continued health checks of an employee.

In addition, the Danish Working Environment Authority follows Executive Order No. 1165 of 16 December 1992 on occupational medical examinations under the Working Environment Act. In Denmark, the regulations under the Working Environment Act, including on occupational medical examinations, are developed by the relevant ministry in cooperation with the social partners.

The Danish authorities are therefore of the opinion of that the Danish health system with occupational health clinics, together with the legislation on occupational health examinations under the Working Environment Act, constitutes a system of occupational health services for all employees.

As regards seafarers, the Government says that Denmark already has a world-leading occupational health service for seafarers in the Danish Centre of Maritime Health Service, and it has also established occupational health and safety councils for the maritime and fisheries sectors.

ECSR interpretation (DIGEST)

Article 3§4 requires States Parties to promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services that are accessible to all workers, in all branches of economic activity and for all enterprises.[409] If those

[409] Conclusions 2003, Bulgaria

services are not established within all enterprises, public authorities must develop a strategy, in consultation with employers' and workers' organisations, for that purpose.[410]
In terms of Article 3§4, States Parties are required to promote the progressive development of occupational services.[411] This means that a State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.[412] Therefore, If occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose.[413] Any strategy to promote the progressive development of occupational health services must include the full national territory, cover nationals of other States Parties, and not only some branches of activity, major enterprises or especially severe risks, but all types of workers.[414]

The number of occupational physicians in the total workforce, the number of enterprises providing occupational health services or who share those services, as well as any increase in the number of workers supervised by those services in comparison to the previous reference period, is relevant on the assessment of State Party conformity to this provision, as is the ratification of ILO Occupational Health Services Convention No. 161 (1985), or the transposition of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.[415]

Occupational health services, which are specialised in occupational medicine, have preventive and advisory functions, beyond mere safety at work.[416] They contribute to conducting workplace-related risk assessment and prevention, worker health supervision, training in matters of occupational safety and health, as well as to assessing working conditions impact on worker health.[417] Occupational health services must be trained, endowed and staffed to identify, measure and prevent work-related stress, aggression and violence.[418]

Opinion of the ECSR

As regards the situation in Denmark, the Committee notes that measures have been taken to promote the progressive development of occupational health services. The Committee also notes that Denmark has not ratified ILO Convention No. 161 on Occupational Health Services (1985) but has transposed Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

However, the Government has not provided information on the following points:
- whether the measures cover the entire national territory, whether they apply to nationals of other States Parties, and not only to some branches of activity, large enterprises or particularly severe risks, but to all types of workers.
- the number of occupational physicians in relation to the total workforce and the number of enterprises providing or sharing occupational health services.

[410] Conclusions 2003, Bulgaria
[411] Conclusions 2009, Albania
[412] Conclusions 2009, Albania, citing International Association Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53.
[413] Conclusions 2009, Albania
[414] Conclusions 2013, Ukraine
[415] Conclusions 2009, France; Albania, Slovenia; Conclusions 2017, Bulgaria
[416] Conclusions 2009, Andorra
[417] Conclusions 2003, Bulgaria
[418] Conclusions 2013, Statement of Interpretation on Article 3

On this basis, and subject to more detailed information on the situation in law and practice, the Committee considers that there do not appear to be any major obstacles to Denmark's acceptance of Article 3§4.

Article 4§4 – *The right to a fair remuneration*

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

4. to recognise the right of all workers to a reasonable period of notice for termination of employment;

Opinion of the ECSR

See page 14-18 of the current report.

Article 4§5 – *The right to a fair remuneration*

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

Opinion of the ECSR

See page 18-19 of the current report.

Article 7§2 – *The right of children and young persons to protection*

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

2. to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;

Opinion of the ECSR

See page 21-23 of the current report.

Article 7§4 – *The right of children and young persons to protection*

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;

Opinion of the ECSR

See page 25 - 26 of the current report.

Article 8§1 – *The right of employed women to protection of maternity*

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;

Opinion of the ECSR

Denmark has ratified this Article in the 1961 Charter. The revised Charter extends the period from 12 to 14 weeks, and Denmark fulfils this.[419]

Article 8§2 – *The right of employed women to protection of maternity*

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;

Opinion of the ECSR

See page 35 - 38 of the current report.

Article 8§3 – *The right of employed women to protection of maternity*
With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;

Opinion of the ECSR

See page 38 - 39 of the current report.

Article 8§4 – *The right of employed women to protection of maternity*
With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;

Opinion of the ECSR

See page 39 - 41 of the current report.

Article 8§5 – *The right of employed women to protection of maternity*

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

[419] Conclusions XXII-4 (2023), Denmark

Opinion of the ECSR

See page 39 - 41 of the current report.

Article 10§4 – *The right to vocational training*

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

4. to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;

Situation in Denmark

The Government indicates in its report that this provision promotes the rehabilitation and integration of the long-term unemployed. The idea behind this new paragraph is that special measures need to be taken for the rehabilitation and integration of the long-term unemployed, as their chances of re-entering the labour market are low.

According to Danish law, unemployed persons may be provided with special measures for retraining and reintegration. The Danish active labour market policies divide the unemployed into different categories. Each category may be eligible for different grants and employment-related services. Individuals are categorised according to their proximity or distance from the labour market.
The long-term goal in each category is to integrate the unemployed into the labour market. According to the Government, the reason why there are different categories is that each category can use different means to achieve the common goal of integrating the unemployed into the labour market.

As the Government points out, the long-term unemployed may have problems other than not having a job. The Danish active labour market policies take this into account. As such, these policies may be combined with social or health-related efforts.

As a way of getting back into the labour market, the unemployed person may be offered an internship in a private company or temporary employment in the public sector. Other relevant measures may include guidance and upgrading.

In 2021, a number of parties in the Danish Parliament entered into an agreement to allocate a total of DKK 159 million for a number of temporary initiatives in 2021 and 2022.

The Government underlines that the initiatives aim to strengthen and improve the chances of the long-term unemployed to return to the labour market through upgrading and practical work-related measures. For instance, there is an initiative for a special wage subsidy for long-term unemployed seniors and an initiative to allocate more funds to a pool of unemployed seniors over 50 years of age who are at risk of long-term unemployment.

ECSR interpretation (DIGEST)

In accordance with Article 10§4, States Parties must fight long-term unemployment through retraining and reintegration measures.[420] A person who has been without work for 12 months or more is long-term unemployed.[421]

[420] Conclusions 2003, Italy
[421] Conclusions 2003, Italy

The main indicators of compliance with this provision are the types of training and retraining measures available on the labour market, the number of persons in this type of training, the special attention given to young long-term unemployed, and the impact of the measures on reducing long-term unemployment.[422]

Equal treatment with respect to access to training and retraining for long-term unemployed persons must be guaranteed to non-nationals.[423] Access to financial assistance for studies shall be provided to nationals of other States Parties lawfully resident in any capacity, or having authority to reside by reason of their ties with persons lawfully residing in the territory of the Party concerned.[424] Students and trainees, who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training are not covered by this provision of the Charter.[425]

Therefore, Article 10§4 does not require the States Parties to grant financial aid to any foreign national who is not already resident in the State Party concerned, on an equal footing with its nationals.[426] However, it requires that nationals of other States Parties who already have a resident status in the State Party concerned, receive equal treatment with nationals in the matters of both access to vocational education (Article 10§1) and financial aid for education (Article 10§4).[427] Those States Parties who impose a permanent residence requirement or any length of residence requirement on nationals of other States Parties in order for those persons to be able apply for financial aid for vocational education and training are in breach of the Charter.[428]

Opinion of the ECSR

As regards the situation in Denmark, the Committee notes that measures are in place for the retraining and reintegration of the long-term unemployed.

However, the Government has not provided information on:
- the number of persons in this type of training, the special attention given to young long-term unemployed persons and the actual impact of the measures on reducing long-term unemployment.
- whether nationals of other States Parties who already have a resident status in Denmark are treated equally with respect to access to training and retraining for the long-term unemployed.

Nonetheless, in view of these requirements, the Committee considers that Denmark is in a position to accept this provision, on account of a number of measures which are already in place. The Committee recommends the immediate acceptance of Article 10§4 of the revised Charter.

Article 11§3 – *The right to protection of health*

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

[422] Conclusions 2020, Cyprus
[423] Conclusions 2020, Ukraine
[424] Conclusions XXII-1 (2020), Luxembourg
[425] Conclusions XXII-1 (2020), Luxembourg
[426] Conclusions XXII-1 (2020), Luxembourg
[427] Conclusions XXII-1 (2020), Luxembourg
[428] Conclusions XXII-1 (2020), Luxembourg

3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Opinion of the ECSR

Denmark has ratified this Article in the 1961 Charter. In the revised Charter, the provision has been amended by the addition of "as well as accidents". The Committee considers that Denmark is in a position to accept this provision, taking into account a number of measures which are already in place. The Committee recommends the immediate acceptance of Article 11§3.[429]

Article 12§2 – *The right to social security*

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

2. to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;

Opinion of the ECSR

Denmark's position has been considered to be in conformity with this Article, which was accepted in the 1961 Charter.[430]

As regards the situation in Denmark, the Committee notes that Denmark has ratified the European Code of Social Security and that, in accordance with Resolution CM/ResCSS(2020)4 of the Committee of Ministers on the application by Denmark of the European Code of Social Security (period from 1 July 2018 to 30 June 2019), Danish law and practice continue to give full effect to Parts II, III, V, VII, VIII and IX of the Code. They also ensure the application of Part IV, subject to the removal of any residence condition for entitlement to contributory unemployment benefits, and Part VI, subject to the extension of the scope of periodical payments in case of permanent injury or death resulting from an accident at work. Denmark thus maintains a social security system which meets the requirements of ILO Convention No. 102.

The Committee considers that Denmark is in a position to accept this provision, taking into account a number of measures which are already in place. It encourages the Government to continue its efforts and to consider accepting Article 12§2.

Article 15§1 – *The right of persons with disabilities to independence, social integration and participation in the life of the community*

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1. to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;

Situation in Denmark

[429] Conclusions XXII-2 (2021), Denmark
[430] Conclusions XXII-2 (2021), Denmark

The Government indicates in its report that the Danish Act on Social Services contains the principle of equal opportunities, which establishes that public services should aim to support persons with disabilities in achieving their potential on an equal basis with persons without disabilities. Another principle is that of compensation, which means that support and assistance are provided to compensate for the needs caused by the disability. Support and assistance can take the form of technical aids, personal assistance, accompaniment etc. Persons with disabilities can benefit from free support and care.
According to the Government, this means that one of the purposes of the Act on Social Services is to promote the full social integration and participation of persons with disabilities in the community.

As outlined in the Act on Social Services, the municipalities shall provide sheltered employment for persons under retirement age who do not qualify under any other legislation. This support is intended for those who are unable to find or retain employment on the labour market under normal conditions on account of substantial impairments, whether physical or mental, or specific social difficulties.

The purpose of the Act on Early Childhood Education and Care (ECEC) is, among other things, to prevent negative social intergenerational transmission and social exclusion by providing general support for children, including children and young people with reduced mental and physical functioning (§1).

It also follows from the Act on ECEC that:

- The Act on ECEC Facilities provides a guarantee of equal access to an ECEC facility for all children below school age. Guaranteed availability means that the local council must offer places in an age-appropriate ECEC facility to all children from the age of 26 weeks until they reach school age (§ 23).
- The local authorities must ensure that children who need support in an ECEC facility in order to thrive and develop, are offered such support (§4)
- The learning environment in ECEC must consider the children's perspective and participation, the children's community, the composition of the group of children and their different health preconditions (§ 8).
- As stated by the Government, Act number 2218 from 29/12/2020 “Act on amendment to the Act on the Prohibition of Discrimination on Grounds of Disability” stipulates that:
  Children and young people with disabilities have the right to reasonable individual adaptation of services in ECEC so that they can achieve the same opportunities for participation as other children and young people and avoid discrimination.

In relation to education, all pupils have the right to education in Danish public primary and lower secondary schools (Folkeskolen). Therefore, children whose development requires special consideration or support must be offered this on the basis of a concrete assessment of the individual’s educational needs. If the need exceeds nine hours a week, the children are offered special education, which is a general right and is not provided as a targeted effort for a specific subgroup of pupils.

In relation to upper secondary education, vocational education and training, it is possible to plan longer periods of education if students cannot follow the normal course plans due to disabilities or other difficulties. For all types of upper secondary education and vocational education and training, it is possible to apply for special assistance, which can take different forms (e.g. extra classes, tools or personal support) depending on the type of disability. In vocational education and training, students and apprentices can extend the duration of the second basic course by up to 50 percent and the institution can create separate classes for

those students and apprentices that follow the second school period on special conditions. Furthermore, on-the-job training can be completed on a less than full-time basis.

In upper secondary education, it is possible to add an extra year of study compared to the standard curriculum and the institutions also have the option of creating specific classes for these students.

ECSR interpretation (DIGEST)

Under Article 15§1, all persons with disabilities, irrespective of age and the nature and origin of their disabilities, are entitled to guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialized bodies, public or private.[431] As under Article 10 of the Charter, vocational training, under Article 15, encompasses all types of higher education, including university education.[432] The Committee examines Article 15§1 issues as they apply to all persons with disabilities (not just as they apply to children).[433]

Legal framework

Securing a right to education for children and others with disabilities plays an important role in advancing their citizenship rights and guaranteeing their fundamental rights.[434] Under Article 15§1, the existence of non-discrimination legislation is therefore necessary as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes.[1536] Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education.[435] Legislation may consist of general anti-discrimination legislation, specific legislation concerning education, or a combination of the two.[436]

Article 15§1 of the Charter makes it an obligation for States Parties to provide education for persons with disabilities, together with vocational guidance and training, in one or other of the pillars of the education system, in other words mainstream or special schools.[437] The priority to be given to education in mainstream establishments, which is referred to explicitly in the article, is subject to a conditionality clause, which if interpreted as it ordinarily would be and with due regard for the context and purpose of the provision, indicates to the public authorities that in order to secure the independence, social integration and participation in the life of the community of persons with disabilities through their education, they must take account of the type of disability concerned, how serious it is and a variety of individual circumstances to be examined on a case-by-case basis.[438] Consequently, Article 15§1 of the Charter does not leave States Parties a wide margin of appreciation when it comes to choosing the type of school in which they will promote the independence, integration and participation of persons with disabilities, as this must clearly be a mainstream school.[439]

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[431] Conclusions 2020, Andorra
[432] Conclusions 2012, Ireland
[433] Conclusions 2020, Statement of Interpretation on Article 15§1
[434] International Association Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §48 1536 Conclusions 2007, Statement of Interpretation on Article 15§1
[435] Conclusions 2007, Statement of Interpretation on Article 15§1
[436] Conclusions 2007, Statement of Interpretation on Article 15§1
[437] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §78
[438] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §78
[439] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §78

States Parties are required to provide the human assistance needed for the school career of the persons concerned.[440] The margin of appreciation applies only to the means that States Parties deem most appropriate to ensure that this assistance is provided, bearing in mind the cultural, political or financial circumstances in which their education system operates.[441] However, this is subject to the provision that, at all events, the choices made and the means adopted are not of a nature or are not applied in a way that deprives the established right of its effectiveness and turns it into a purely theoretical right.[1544] The situation is not in conformity with Article 15§1 of the Charter on where it has not been established that the right of children with disabilities to mainstream education and training is effectively guaranteed.[442]

Measures aimed at promoting inclusion and quality in education

'Integration' and 'inclusion' are two different notions, integration not necessarily leading to inclusion.[443] There is integration when pupils are required to fit the mainstream system, whereas inclusion is about the child's right to participate in mainstream school and the school's obligation to accept the child, taking account of the best interests of the child as well as their abilities and educational needs as a primary consideration.[444]

The Committee noted that the UN Committee on the Rights of Persons with Disabilities, in its General Comment No. 4, (2016), on the Right to inclusive education has stated that "inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion."[445]

The right to inclusive education is a right protected under the Charter, in terms of which the child must be guaranteed access to a quality education.[446] It also serves as a basis for establishing an inclusive society protecting a child with intellectual disability from exclusion and isolation.[447] States Parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.[448]

Inclusive education implies the provision of support and reasonable accommodations which persons with disabilities are entitled to expect in order to access schools effectively.[449] Such reasonable accommodations relate to an individual and help to correct factual inequalities.[450] Appropriate reasonable accommodations may include: adaptations to the class and its

[440] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §81
[441] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §81 1544 European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §81
[442] Conclusions 2020, Serbia
[443] Conclusions 2020, Statement of Interpretation on Article 15§1
[444] Mental Disability Advocacy Center (MDAC) v. Belgium, Complaint No. 109/2014, decision on the merits of 16 October 2014, §66
[445] Conclusions 2020, Andorra
[446] International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium, Complaint No. 141/2017, decision on the merits of 9 September 2020, §181
[447] International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium, Complaint No. 141/2017, decision on the merits of 9 September 2020, §181
[448] Conclusions 2020, Statement of Interpretation on Article 15§1
[449] Conclusions 2020, Andorra
[450] Conclusions 2020, Andorra

location, provision of different forms of communication and educational material, provision of human or assistive technology in learning or assessment situations as well as non-material accommodations, such as allowing a student more time, reducing levels of background noise, sensitivity to sensory overload, alternative evaluation methods or replacing an element of the curriculum by an alternative element.[451] Assistance at school is a particularly important means of being able to keep children and adolescents with autism in mainstream schools.[452]

Education and training are the essential foundation to obtain a position in the open labour market and to be able to lead a self-determined life.[453] Young persons with disabilities with an education below the upper secondary level are *per se* subject to various disadvantages on the employment market.[454] States Parties must take measures in order to enable integration and guarantee that both mainstream and special schools ensure adequate teaching.[455] Furthermore, States Parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.[456]

Specialised institutions shall ensure, through their internal organisation and/or their working methods, the predominance of guidance, education and vocational training over the other functions and duties that they may be required to perform under domestic law even when the law only foresees educational provision within these institutions as a subsidiary element amongst a number of other activities (pedagogical, psychological, social, medical and paramedical).[457]

Access to education

To assess the effective equal access of children and adults with disabilities to education and vocational training, the following key figures are taken into consideration:

- total number of persons with disabilities, including the number of children;[458]
- number of students with disabilities in mainstream classes, special unites within mainstream schools (or with complementary activities in mainstream settings) in special schools and vocational facilities;[459]
- the number and proportion of children with disabilities out of education;[460]
- the percentage of students with disabilities entering the labour market following mainstream or special education or/and training;[461]
- the number of persons with disabilities (children and adults) living in institutions;[462]
- any relevant case law and complaints brought to the appropriate bodies with respect to discrimination on the ground of disability in relation to education and training;[463]
- the number of children with disabilities who do not complete compulsory school, as compared to the total number of children who do not complete compulsory school;[464]

[451] Conclusions 2020, Andorra
[452] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §85
[453] Conclusions XX-1 (2012), Austria
[454] Conclusions XX-1 (2012), Austria
[455] Conclusions XX-1 (2012), Austria
[456] Conclusions XX-1 (2012), Austria
[457] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §§ 111 and 116
[458] Conclusions 2012, Russian Federation
[459] Conclusions 2020, Andorra; Conclusions 2012, Russian Federation
[460] Conclusions 2020, Andorra
[461] Conclusions 2012, Russian Federation
[462] Conclusions 2008, Lithuania
[463] Conclusions 2008, Lithuania
[464] Conclusions 2020, Andorra

- the number and proportion of children with disabilities under other types of educational settings, including home-schooled children; children attending school on a part time basis or in residential care institutions, whether on a temporary or long-term basis;[465]
- the drop-out rates of children with disabilities compared to the entire school population.[466]

Article 15§1 is one of the rights protected by the Charter which is exceptionally complex and particularly expensive to resolve.[467] Therefore, the measures taken by a State to achieve the Charter's objectives must meet the following three criteria: (i) a reasonable timeframe, (ii) measurable progress and (iii) financing consistent with the maximum use of available resources.[468]

States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for other persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings.[469]

Opinion of the ECSR

With regard to the situation in Denmark, and also taking into account the information provided in relation to Article 15§1 of the 1961 Charter in the Committee's Conclusions XXII-1 (2020) on Denmark[470], the Committee notes that measures are in place to ensure the right of persons with disabilities to guidance, education and vocational training.
However, the Government has not provided information on the following points:

- whether measures related to vocational training encompass higher education.
- the definition of disability under the 2018 law on non-discrimination based on disability, and whether this legislation also provides an appropriate remedy for persons with disabilities who are denied an effective right to education and training.
- up-to-date statistical information regarding the effective equal access of children and adults with disabilities to education and vocational training in Denmark, as mentioned in the ECSR case law:
  - the total number of persons with disabilities,
  - the number of students with disabilities in and out of education,
  - the percentage of students with disabilities entering the labour market after completing their education or training,
  - the number of children with disabilities who do not complete compulsory education as a proportion to the total number of children who do not complete compulsory education,
  - the number and proportion of children with disabilities in other types of educational settings,
  - the drop-out rates of children with disabilities as a proportion to the total school population,
  - the number of persons with disabilities (children and adults) living in institutions,
  - any relevant case law and complaints brought to the appropriate bodies regarding discrimination on the grounds of disability in education and training.

[465] Conclusions 2020, Andorra
[466] Conclusions 2020, Andorra
[467] International Association Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53
[468] International Association Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53
[469] International Association Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53
[470] https://rm.coe.int/rapport-dnk-en/1680a1c0e6

Nonetheless, on this basis and subject to more detailed information on the situation in law and practice, the Committee considers that there are no major obstacles to Denmark's acceptance of Article 15§1.

Article 15§2 – *The right of persons with disabilities to independence, social integration and participation in the life of the community*

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

2. to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;

Situation in Denmark

In the report submitted in August 2023, the Government did not provide any information relating specifically to Article 15§2.

ECSR interpretation (DIGEST)

Article 15, by establishing a separate right to vocational training, rehabilitation and resettlement for physically and mentally disabled persons, aims to offer them an increased protection in an area, namely employment, in which they are more vulnerable than the rest of the workforce.[471] Under the approach adopted in Article 15, the State Party is responsible for adopting measures to help disabled persons participate fully and actively in the community.[472]

Article 15§2 requires States Parties to promote an equal and effective access to employment on the open labour market for persons with disabilities.[473] It applies to persons with physical and/or intellectual disabilities.[474] This obligation is not reduced in times of health crisis.[475] This requires States to take the reasonable accommodation measures required to ensure that persons with disabilities are protected from the risks caused by the virus associated with the workplace context (including travel to and from work).[476]

States Parties need to systematically provide updated figures concerning the total number of persons with disabilities, including those in age of working; those employed (on the open market and in sheltered employment); those benefiting from employment promotion measures; those seeking employment; those that are unemployed as well as the general transfer rate of people with disabilities from sheltered to open market employment.[477]

[471] Conclusions XIV-2 (1998), Statement of Interpretation on Article 15
[472] Conclusions XIV-2 (1998), Statement of Interpretation on Article 15
[473] Conclusions XX-1 (2012), Czech Republic
[474] Conclusions I (1969), Statement of Interpretation on article 15§2
[475] Statement on Covid-19 and social rights adopted on 24 March 2021
[476] Statement on Covid-19 and social rights adopted on 24 March 2021
[477] Conclusions XX-1 (2012), Czech Republic; Conclusions 2012, Cyprus

Legal framework

To this end, legislation must prohibit discrimination on the basis of disability to create genuine equality of opportunities on the open labour market.[478] Under Article 15§2, anti-discrimination legislation must include the adjustment of working conditions (reasonable accommodation) and confer an effective remedy on those who are found to have been unlawfully discriminated.[479] In addition, there must be obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities, in particular persons who have become disabled while in their employment as a result of an industrial accident or occupational illness.[480]

With persons with disabilities being less likely than others to be employed in the ordinary labour market, the Covid-19 crisis risks marginalising them further.[481] In this situation, States Parties should, on the one hand, ensure that job and income losses of persons with disabilities are compensated by adequate social security benefits and, on the other hand, reinforce efforts to integrate persons with disabilities into the labour market.[482] In this latter respect, the pandemic conditions make it particularly important that domestic law must provide for obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities.[483]

Access of persons with disabilities to employment

The effective exercise of the right of persons with disabilities to vocational training and rehabilitation requires specific measures to be taken, which may, if need be, take the form of positive action designed to improve the “employability” of disabled persons and their access to and ability to remain in employment.[484] Employment policy for disabled persons must allow them to use their skills by offering them jobs which correspond to their employment potential within the ordinary working environment.[485] In addition, particular emphasis must be put on the protection of persons who are disabled as a result of an occupational accident or illness.[486]

The specific account taken of disabilities in working life implies the responsibility of all its participants: i.e. the State, employers and trade unions.[487] The aim of this provision of the Charter is therefore to achieve equal employment opportunities for persons with disabilities, by not only rethinking the disability itself but also the means to obtain the participation of disabled persons in the life of the community on an equal footing.[488] States Parties enjoy a margin of discretion concerning the other measures they take in order to promote access to employment of persons with disabilities. Article 15§2 does not require the introduction of quotas but, when such a system is applied, its effectiveness is taken into consideration when assessing conformity with Article 15§2.[489]

[478] Conclusions 2012, Russian Federation; Conclusions 2003, Slovenia
[479] Conclusions XIX-1 (2008), Czech Republic
[480] Conclusions 2007, Statement of Interpretation on Article 15§2
[481] Statement on Covid-19 and social rights adopted on 24 March 2021
[482] Statement on Covid-19 and social rights adopted on 24 March 2021
[483] Statement on Covid-19 and social rights adopted on 24 March 2021
[484] Conclusions XIV-2 (1998), Statement of Interpretation on Article 15
[485] Conclusions XIV-2 (1998), Statement of Interpretation on Article 15
[486] Conclusions XIV-2 (1998), Statement of Interpretation on Article 15
[487] Conclusions XIV-2 (1998), Statement of Interpretation on Article 15
[488] Conclusions XIV-2 (1998), Statement of Interpretation on Article 15
[489] Conclusions XIV-2 (1998), Belgium

Article 15§2 of the revised Charter requires that persons with disabilities be employed in an ordinary working environment, except where this is not possible due to the nature of the disability.[490] In such exceptional cases, provision may be made for sheltered employment.[491] They should aim to assist their beneficiaries to enter the open labour market.[492] Persons working in sheltered employment facilities where production is the main activity are entitled to the basic provisions of labour law and in particular the right to fair remuneration and trade union rights.[493]

Opinion of the ECSR

As regards the situation in Denmark, the Committee notes that the Government has not provided any information on this provision.
However, the Committee takes into account the information relating to employment provided by the Government under Article 15§1 of the Charter referred to above, as well as the information relating to Article 15§2 of the 1961 Charter contained in the Committee's Conclusions XXII-1 (2020) concerning Denmark, in which, pending receipt of the requested information, the Committee concluded that the situation in Denmark was in conformity with Article 15§2 of the 1961 Charter[494].

Therefore, the Committee notes that measures are in place to promote access to employment for persons with disabilities.

On this basis and subject to more detailed information on current measures to promote and support the employment of persons with disabilities, as well as up-to-date figures on the employment of persons with disabilities, the Committee considers that there appear to be no major obstacles to Denmark's acceptance of Article 15§2.

Article 15§3 – *The right of persons with disabilities to independence, social integration and participation in the life of the community*

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

Situation in Denmark

In its report, the Government indicates that the Ministry of Transport considers that this provision does not go beyond the existing obligations of Denmark in the field of transport with regard to the opportunities and rights of disabled people in relation to public transport, i.e. the rights of EU passengers, and in accordance with the UN Convention on the Rights of Persons with Disabilities, to which Denmark became a party in 2009.

ECSR interpretation (DIGEST)

[490] Conclusions 2005, Estonia
[491] Conclusions 2005, Estonia
[492] Conclusions 2005, Estonia
[493] Conclusions XVII-2 (2005), Czech Republic
[494] https://rm.coe.int/rapport-dnk-en/1680a1c0e6

The right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail, sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities).[495] Such measures, including technical aids, must not be pursued in isolation and should be programmed to complement each other, on a clear legislative basis.[496]

Relevant legal framework and remedies

To this purpose, Article 15§3 requires:

- the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated.[497] Such legislation may consist of general anti-discrimination legislation, specific legislation or a combination of the two;[498]
- the adoption of a coherent policy in the disability context: positive action measures to achieve the goals of social integration and full participation of persons with disabilities.[499] Such measures should have a clear legal basis and be coordinated.[500]

To give meaningful effect to the promotion of the full social integration and participation in the life of the community of persons with disabilities:

- Mechanisms must be established to assess the barriers to communication and mobility faced by persons with disabilities and identify the support measures that are required to assist them in overcoming these barriers;[501]
- Technical aids must be available either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means. Such aids may for example take the form of prostheses, walkers, wheelchairs, guide dogs and appropriate housing support arrangements;[502]
- Support services, such as personal assistance and auxiliary aids, must be available, either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means.[503]

Consultation

Article 15§3 requires that persons with disabilities and their representative organisations should be consulted in the design and ongoing review of positive action measures and that an appropriate forum should exist to enable this to happen.[504]

Persons with disabilities and their organisations must be consulted and participate in the design, implementation and review of disability policies in the context of Covid-19.[505] Covid-19 must not result in increased institutionalisation of persons with disabilities.[506]

[495] Conclusions 2005, Norway
[496] Conclusions 2008, Statement of Interpretation on Article 15§3; Conclusions 2005, Norway
[497] Conclusions 2005, Norway
[498] Conclusions 2012, Estonia
[499] Conclusions 2007, Slovenia
[500] Conclusions 2007, Slovenia
[501] Conclusions 2008, Statement of Interpretation on Article 15§3
[502] Conclusions 2008, Statement of Interpretation on Article 15§3
[503] Conclusions 2008, Statement of Interpretation on Article 15§3
[504] Conclusions 2020, Serbia; Conclusions 2005, Norway
[505] Statement on Covid-19 and social rights adopted on 24 March 2021
[506] Statement on Covid-19 and social rights adopted on 24 March 2021

Measures to ensure the right of persons with disabilities to live independently in the community

Telecommunications and new information technology must be accessible and sign language must have an official status.[507]

In the context of the Covid-19 pandemic, services for the population specifically set up to cope with the pandemic, including remote and online services, quarantine facilities, personal protective equipment, and public information and guidelines, should be accessible to persons with disabilities on an equal basis to other members of the community.[508] Amongst other things, public health information must be made available in sign language and accessible means, modes and formats.[509]

Mobility and transport

Public transports (land, rail, sea and air), all newly constructed or renovated public buildings, facilities and buildings open to the public, and cultural and leisure activities should be physically accessible.[510]

Housing

The needs of persons with disabilities must be taken into account in housing policies, including the construction of an adequate supply of suitable, public, social or private, housing.[511] Further, financial assistance should be provided for the adaptation of existing housing.[512]

Financial and personal assistance

The prevalence of poverty amongst people with disabilities in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of State efforts to ensure the right of people with disabilities to enjoy independence, social integration and participation in the life of the community.[513] The obligation of States to take measures to promote persons with disabilities' full social integration and participation in the life of the community is strongly linked to measures directed towards the amelioration and eradication of poverty amongst people with disabilities.[514] Therefore, the Committee takes poverty levels experienced by persons with disabilities into account when considering the State's obligations under Article 15§3 of the Charter.[515]

Measures must also focus on combatting discrimination against, and promoting equal opportunities for, people with disabilities from particularly vulnerable groups such as ethnic minorities, Roma, asylum-seekers and migrants.[516]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the information provided in the report.

However, the Government has not provided information on, *inter alia*:

[507] Conclusions 2016, Austria, citing Conclusions 2005, Estonia and Conclusions 2003, Slovenia
[508] Statement on Covid-19 and social rights adopted on 24 March 2021
[509] Statement on Covid-19 and social rights adopted on 24 March 2021
[510] Conclusions 2016, Latvia, citing Conclusions 2003, Italy
[511] Conclusions 2003, Italy
[512] Conclusions 2003, Italy
[513] Conclusions 2020, Andorra
[514] Conclusions 2020, Andorra
[515] Conclusions 2020, Andorra
[516] Conclusions 2020, Andorra

- the existence of comprehensive non-discrimination legislation covering both the public and private sectors in fields such as housing, transport, telecommunications and cultural and leisure activities, as well as effective remedies for those persons with disabilities who have been unlawfully treated;
- the existence of a coherent policy for the social integration and full participation of persons with disabilities;
- whether there are mechanisms in place to assess the barriers to communication and mobility faced by persons with disabilities, and to identify the support measures that are required to assist them in overcoming these barriers;
- whether technical aids and support services are available to persons with disabilities;
- whether persons with disabilities and their representative organisations are consulted in the design and ongoing review of policies;
- whether public transport, public buildings and facilities and cultural and leisure activities are physically accessible;
- whether the needs of persons with disabilities are taken into account in housing policies;
- whether there are measures to alleviate and eradicate poverty amongst people with disabilities;
- whether there are measures to combat discrimination and promote equal opportunities for people with disabilities from particularly vulnerable groups such as ethnic minorities, Roma, asylum seekers and migrants.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice meets the standards of the Charter. It encourages the Government to continue its efforts and to consider acceptance of Article 15§3 of the revised Charter in the near future.

Article 17§1 – *The right of children and young persons to social, legal and economic protection*

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

b) to protect children and young persons against negligence, violence or exploitation;

c) to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

Situation in Denmark

In its report, the Government indicates that this article has been amended in the revised Charter. Among other things, the word "legal" has been added to the title and it has been specified that children and young people should have access to free education. Furthermore, as noted by the Government, the article has been expanded to include two separate paragraphs, which are discussed below.

The current framework of child protection in Denmark

In Denmark, any person who is lawfully residing in Denmark is eligible for assistance under the Act on Social Services which provides children with a number of rights. In Denmark, the municipalities (*kommuner*) are responsible for the provision of special support to children and young persons under the age of 18 and their families pursuant to the Danish Act on Social Services. The municipalities also have a general obligation to monitor the living conditions of children and young persons within the municipality (section 146).

Special support for a child or young person under 18 is provided when the municipality deems that the child or young person has special needs. The municipality has a duty to provide support for a child or young person in accordance with his / her best interests.

As explained by the Government, the objective of assisting children and young persons with special needs is to enable them to access the same opportunities for personal development, health and an independent adult life as their peers. Among other things, the support provided shall ensure continuity in the upbringing of the child or young person and a safe environment of care, for instance by supporting the child or young person's family relations or other circles of relationships.

The Amended Article 17 in the Danish Legal Framework

The amended Article 17 of the 1996 Act establishes the right of children and young persons to social, legal and economic protection. Within the Danish legal framework, children have a fundamental right to social protection. Hence, every child lawfully residing in Denmark is entitled to assistance under the Act of Social Services, which states that the municipal council is responsible for supervising the conditions under which children, young persons under 18 years of age and expectant parents live in the municipality. The municipal council shall carry out its supervisory duties in such a way that it is able to identify as soon as possible all cases where a child or young person under the age of 18 must be considered to be in need of special support or where an infant must be considered to be in need of special assistance immediately after birth. If the municipal council has reason to assume that a child or young person needs special support, the municipal council must conduct a child protection investigation in order to clarify the child's or young person's needs in accordance with section 50 of the Act on Social Services.

Age-specific support

The Government notes that, as stated in the Digest of the Case Law of the ECSR, "States Parties must take all the necessary legal, financial and operational measures to progressively provide all young children with the most appropriate care services in family-based and community-based family-type settings, particularly children under the age of three" (page 149).

In Denmark, all children have the right to special support, and it is up to the social worker's individual judgment to determine what kind of special support is right for the child, for instance a placement in care. This right is the same for all children regardless of age. Therefore, the article would not strengthen the rights of the whole group of children by focusing specifically on children under the age of three.

Number of children in care

The Government also refers to the Digest which states that "a unit in a child welfare institution should be of such a size as to resemble the home environment and should not therefore accommodate more than 10 children" (page 150).

In accordance with Danish law, every institution where children can be placed in care must be approved by the Social Supervisory Authority, a state authority. The Authority also approves

how many places the institution can have, which will be decided on the basis of the target group for the institution, the psychological environment, and quality.

De-institutionalisation

Finally, according to the Digest: "Article 17 implies an obligation to initiate and carry forward a de-institutionalisation process, by effectively making community-based family-type services available to all young children who cannot grow up in a family environment or are temporarily or definitively deprived of their family's support. In doing so, States Parties must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources. Failure to do so violates Article 17" (page 151).

According to the Act on Social Service, the municipal council shall decide on the specific placement facility for the child when it has been decided that the child is to be placed in out-of-home care. When selecting the placement facility, the municipality shall choose the facility that is best suited to meet the needs of the child or young person. The municipality shall give priority to the possibility for the placement facility to offer close and stable adult relationships, which shall include assessing whether foster care is the most appropriate option. The choice of the placement facility is therefore based on individual judgment. It follows that Danish law does not directly support the idea of de-institutionalisation as in some cases it will be the best choice for a child or young person to be placed in an institution that is specialised in handling the special needs that the child may have.

ECSR interpretation (DIGEST)

Appendix: It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.
This does not imply an obligation to provide compulsory education up to the above-mentioned age.[517]

Article 17 is interpreted in light of the UN Convention on the Rights of the Child.[518] It imposes a positive obligation on States to adopt the necessary measures to ensure that children can effectively exercise their right to grow up in an environment favourable to the development of their personality and their physical and mental abilities.[519] States having accepted such provision must take all appropriate and necessary measures to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need.[520]

The obligation of States Parties to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the amelioration and eradication of child poverty and social exclusion.[521] This also applies where child poverty and social exclusion are caused or exacerbated by a public health crisis such as the Covid-19 pandemic.[522]

Article 17 covers:

[517] Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163
[518] Conclusions XV-2 (2001), Statement of Interpretation on Article 17; World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, §55
[519] European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, Complaint No. 157/2017, decision on the merits of 17 June 2020, §134
[520] European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, Complaint No. 157/2017, decision on the merits of 17 June 2020, §134
[521] Statement on Covid-19 and social rights adopted on 24 March 2021
[522] Statement on Covid-19 and social rights adopted on 24 March 2021

- the legal status of the child;[523]
- rights of children in public care;[524]
- protection of children from violence, ill–treatment and abuse;[525]
- children in conflict with the law;[526]
- the right to assistance.[527]

The legal status of the child

Article 17 of the Charter permits no discrimination between children born outside of marriage, and children born within marriage, e.g. in respect of maintenance obligations and inheritance rights.[528]

Article 17 guarantees the right of a child to know, in principle, their origins.[529] The Committee examines the procedures available for the establishment of maternity and paternity and, in particular, the situations where the establishment of maternity or paternity is not possible and where the right of a child to know their origins is restricted.[530]

As regards the minimum age for marriage, questions have been raised as to the reasons for a difference in the minimum age for marriage for males and females in States Parties.[531] States Parties should equalise the minimum age of marriage for women and men.[532]

Owing to the increasing number of children in Europe registered as stateless, States Parties must take measures to reduce statelessness (such as ensuring that every stateless migrant child is identified, simplifying procedures for obtaining nationality, and taking measures to identify children unregistered at birth).[533]

States Parties must also take measures to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular situation.[534]

Right to education

Article 17, in its both paragraphs, guarantees the right of all children to education.[535] However, where States have accepted both paragraphs of Article 17, the issue is examined under Article 17§2.[536] Where a State has also ratified Article 15, then education for disabled children will be considered under that provision rather than under Article 17§2 of the revised Charter.[537]

Children in public care

The family is the natural environment for the growth and well-being of the child and parents have the primary responsibility for the upbringing and development of the child.[538] States

[523] Conclusions 2019, Armenia
[524] Conclusions XV-2 (2001), Statement of Interpretation on Article 17
[525] Conclusions XV-2 (2001), Statement of Interpretation on Article 17
[526] Conclusions 2019, Armenia
[527] Conclusions 2019, Armenia
[528] Conclusions XVII-2 (2005), Malta
[529] Conclusions XV-2 (2001), France
[530] Conclusions XV-2 (2001), France
[531] Conclusions XV-2 (2001), France; Conclusions 2011, Ukraine
[532] Conclusions XV-2 (2001), France; Conclusions 2011, Ukraine
[533] Conclusions 2019, Armenia
[534] Conclusions 2019, Armenia
[535] Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §34
[536] Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §34
[537] Conclusions 2019, Austria
[538] European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, Complaint No. 157/2017, decision on the merits of 17 June 2020, §135

Parties must take all the necessary legal, financial and operational measures to progressively provide all young children with the most appropriate care services in family-based and community-based family-type settings, particularly children under the age of three.[539]

Any restriction or limitation of parents' custodial rights should be based on criteria laid down in legislation, and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family.[540]

The long-term care of children outside their home should take place primarily in foster families suitable for their upbringing or, only if necessary, in institutions.[541] The child's re-integration within the family should be aimed at, and contacts with the family during the placement should be provided for, unless contrary to the best interests of the child.[542] Children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well-being as well as to special protection and assistance.[543] Such institutions must provide conditions promoting all aspects of children's growth.[544] A unit in a child welfare institution should be of such a size as to resemble the home environment and should not therefore accommodate more than 10 children.[545] The placement of the child should be subject to periodic review with regard to the child's best interest.[546] Fundamental rights and freedoms such as the right to integrity, privacy, property and to meet with persons close to the child must be adequately guaranteed for children living in institutions.[547]

Only the restrictions on the right to integrity, privacy and property necessary for the security, physical and mental health and development of the child or the health and security of the others are admissible.[548] The conditions for any restrictions to the freedom of movement and for isolation as a disciplinary measure or punishment, should also be laid down in legislation and be limited to what is necessary for the purpose of the upbringing of the young person.[549] Domestic law must provide a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family.[550]

Furthermore, a procedure must exist for complaining about the care and treatment in institutions.[551] There must be adequate supervision of the child welfare system and in particular the institutions involved.[552] Where children's homes are run by private providers and foster families are recruited by private agencies, States Parties must ensure that mechanisms are in place to ensure appropriate care of adequate quality.[553]

Placement must be an exceptional measure, and is only justified when it is based on the needs of the child, namely if remaining in the family environment represents a danger for the child.[554]

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[539] European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, Complaint No. 157/2017, decision on the merits of 17 June 2020, §144
[540] Conclusions XIX-4 (2011), Statement of interpretation on Articles 16 and 17§1, citing Conclusions XV-2, Statement of Interpretation on Article 17§1
[541] Conclusions XV-2, Statement of Interpretation on Article 17§1
[542] Conclusions XIX-4 (2011), Statement of interpretation on Articles 16 and 17§1
[543] Conclusions XV-2, Statement of Interpretation on Article 17§1
[544] Conclusions XV-2, Statement of Interpretation on Article 17§1
[545] Conclusions 2005, Republic of Moldova; Conclusions XVII-2 (2005), Malta
[546] European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, Complaint No. 157/2017, decision on the merits of 17 June 2020, §143
[547] Conclusions XV-2, Statement of Interpretation on Article 17§1
[548] Conclusions XV-2, Statement of Interpretation on Article 17§1
[549] Conclusions XV-2, Statement of Interpretation on Article 17§1
[550] Conclusions XV-2, Statement of Interpretation on Article 17§1
[551] Conclusions XV-2, Statement of Interpretation on Article 17§1
[552] Conclusions XV-2, Statement of Interpretation on Article 17§1
[553] Conclusions XXI-4 (2019), United Kingdom
[554] Conclusions XIX-4 (2011), Statement of interpretation on Articles 16 and 17§1

The financial conditions or material circumstances of the family should not be the sole reason for placement.[555] In all circumstances, appropriate alternatives to placement should first be explored, taking into account the views and wishes expressed by the child, their parents and other members of the family.[556]

When it is generally acknowledged that a particular group of children is or could be faced with a disproportionate risk of being placed in care in comparison with the majority of population, as is the case for both Roma children and children with disabilities, States Parties have an obligation to collect data on the extent of the problem.[557] The collection and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of an adequate policy and the adoption of appropriate measures to ensure the social and economic protection the children in question respectively need.[558]

Article 17 implies an obligation to initiate and carry forward a deinstitutionalisation process, by effectively making community-based family-type services available to all young children who cannot grow up in a family environment or are temporarily or definitively deprived of their family's support.[559] In doing so, States Parties must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources.[560] Failure to do so violates Article 17.[561]

Protection of children from violence, ill–treatment and abuse

States Parties' domestic law must prohibit and penalise all forms of violence against children, including all forms of corporal punishment, in all settings.[562] These are acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.[563] The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. Moreover, States Parties must act with due diligence to ensure that such violence is eliminated in practice.[564]

Children in conflict with the law

The Committee considers that the right to social and economic protection envisaged in Article 17 has long been considered to apply to children in conflict with the law.[565] The obligation of States Parties in terms of Article 17 to 'take all appropriate and necessary measures' to ensure the effective exercise of that right, including 'the establishment or maintenance of appropriate

[555] Conclusions XIX-4 (2011), Statement of interpretation on Articles 16 and 17§1
[556] Conclusions XIX-4 (2011), Statement of interpretation on Articles 16 and 17§1
[557] European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, Complaint No. 157/2017, decision on the merits of 17 June 2020, §172, citing European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23
[558] European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, Complaint No. 157/2017, decision on the merits of 17 June 2020, §172, citing European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23
[559] European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, Complaint No. 157/2017, decision on the merits of 17 June 2020, §145
[560] European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, Complaint No. 157/2017, decision on the merits of 17 June 2020, §146
[561] European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, Complaint No. 157/2017, decision on the merits of 17 June 2020, §165
[562] Conclusions 2005, Republic of Moldova; Association for the Protection of all Children (APPROACH) Ltd v. Ireland, Complaint No. 93/2013, decision on the merits of 2 December 2014, §§ 53-54; Conclusions 2019, Belgium
[563] World Organisation against Torture (OMCT) v. Portugal, Complaint No. 34/2006, decision on the merits of 5 December 2006, §§ 19-21 1770 World Organisation against Torture (OMCT) v. Portugal, Complaint No. 34/2006, decision on the merits of 5 December 2006, §§ 19-21
[564] Association for the protection of all children (APPROACH) Ltdv. Belgium, Complaint No. 98/2013, decision on the merits of 20 January 2015, §47
[565] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §45

institutions or services' necessarily extends to those measures, institutions and services that are specific to the position of children in conflict with the law.[566]

Diversion

Article 17 includes the obligation to develop and take measures to reduce the especially harmful effects of contact with the justice system and to ensure that the danger posed to the child's wellbeing and development by such contact is limited.[567] One of the primary ways in which this can be achieved is through the diversion of children away from formal processes and into effective diversionary programmes in line with international standards on the rights of the child.[568]

It may be left to the discretion of States Parties to decide on the exact nature and content of measures of diversion measures, and to take the necessary legislative and other measures for their implementation.[569] With regard to the form that such diversion measures might take, a variety of community based programmes can be developed such as community service, supervision and guidance by designated officials, family conferencing and other restorative justice options, including reparation to victims.[570]

All diversion measures must be consistent with the child's human rights and in the child best interests.[571] This includes ensuring respect for legal safeguards in this context, such as ensuring legal assistance relating to the diversion offered to the child and the possibility of review of the measure.[572]

The failure to provide alternatives (diversion) to formal judicial proceedings for children below the age of criminal responsibility amounts to a violation of Article 17 of the Charter.[573]

Procedural safeguards

Under Article 17 of the Charter children must benefit from an adequate level of protection, irrespective of the formal designation and nature of proceedings (criminal or civil) in national law.[574] Adequate protection must be provided to children below the age of criminal responsibility in both the pre-trial and trial stages of proceedings.[575]

The age of criminal responsibility must not be too low.[576] It should not be lower than 14 years of age and States should seek to progressively raise the minimum age of criminal responsibility.[577] Even though children below the age of criminal responsibility cannot be held

[566] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §45
[567] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §120
[568] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §120
[569] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §121
[570] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §121
[571] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §123
[572] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §123
[573] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §124
[574] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §85
[575] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §86
[576] Conclusions 2011, Ireland; Conclusions XIX-4 (2011), United Kingdom
[577] Conclusions 2019, France

criminally liable, they must be afforded adequate legal procedural protections because those proceedings may have important consequences for them in terms of their social and economic protection.[578]

The criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly.[579] The adoption of measures in light of the intention of the State to create a more protective system for children below the age of criminal responsibility should not result in children being provided with less and/or weaker legal procedural protection than adults.[580]

Right to legal assistance

Children below the age of criminal responsibility should be assisted by a lawyer in order to understand their rights and the procedure applied to them, so as to prepare their defence.[581] Moreover, they should in all cases be able to obtain legal assistance from the outset of the proceedings and especially during questioning by the police. States should arrange for the child to be assisted by a lawyer where the child or the legal guardian has not arranged such assistance.[582]

The assistance of a lawyer is moreover necessary in situations where parents/legal guardians have interests that conflict with those of the child and where it is in the child's best interest to exclude the parents/legal guardians from being involved in the proceedings.[583] As such, mandated separate legal representation for children is crucial at the pretrial stage of proceedings.[584]

The provision of legal assistance to children in conflict with the law should not be left at the discretion of the authorities, even in the context of the pre-trial stage of proceedings.[585]

Children should be supported by a parent, legal guardian or other trusted person during questioning.[586] The latter have the role of providing general psychological and emotional assistance to the child and thereby contribute to effective outcomes, but they cannot be expected to have sufficient knowledge of the legal matters concerning the rights of the child and the child justice system.[587]

[578] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §86
[579] Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1
[580] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §85
[581] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §93
[582] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §93
[583] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §99
[584] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §99
[585] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §94
[586] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §98
[587] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §98

Children should be accorded the right to be informed of the content of the final resolution of a police authority.[588] States Parties may choose the means and measures used to achieve this in practice.[589]

Children in detention

Minors should only exceptionally be detained pending trial for serious offences, for short periods of time and should in such cases be separated from adults.[1797]

Prison sentences should only exceptionally be imposed on young offenders. They should only be for a short duration and the length of sentence must be laid down by a court.[590] Sentences should be regularly reviewed.[1799] Moreover, young offenders should not serve their sentence together with adult prisoners.[591]

Solitary confinement of a child for up to four weeks is not in conformity with Article 17.[592]

Children found guilty of offences should be able to maintain contact with their family, inter alia, by placing them as close to the family as possible and by allowing them to receive correspondence and visits.[593]

Right to assistance

Article 17 of the Charter stipulates that minors must be able to receive protection which is appropriate to their age and the dangers to which they are exposed because of it.[594] Article 17 guarantees the right of children, including children in an irregular situation and unaccompanied minors to care and assistance, including medical assistance and appropriate accommodation.[595]

Article 17 includes the assistance to be provided by a State Party where the minor is unaccompanied or if the parents are unable to provide such assistance.[596] Application of paragraph 1(b) of Article 17 is of particular importance, because failure to apply it will obviously expose a number of children and young persons to serious risks to their lives or physical integrity.[597] As the scope of Articles 31§2 and 17 overlap to a large extent, the Committee assesses the issue of the right to a shelter of unaccompanied minors under the scope of Article 31§2 when States Parties have accepted both provisions.[598]

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[588] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §104

[589] International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, §106 1797 Conclusions 2005, France; Conclusions XIX-4 (2011), Denmark; Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1

[590] Conclusions 2011, Norway; Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1 1799 Conclusions 2019, Bosnia and Herzegovina

[591] Conclusions 2011, Belgium; Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1

[592] Conclusions XXI-4 (2019), Denmark

[593] Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1

[594] European Committee for Home Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §97

[595] International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of 3 November 2004, §36; Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 70-71 ; European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §50

[596] Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §73

[597] Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §73

[598] European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §173

States Parties must take the necessary and appropriate measures to guarantee unaccompanied minors the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity.[599]

The system for the reception of unaccompanied foreign minors must respect the dignity of the children.[600]

Unaccompanied migrant children must be placed as quickly as possible in an appropriate reception structure and their needs must be meticulously assessed.[601] Indeed, immediate assistance is essential and allows assessing material needs of young people, including the need for medical and psychological care, in order to set up a child support plan.[602] This assessment is often crucial for the effectiveness of the right to asylum.[603]

The detention of unaccompanied minors in waiting areas, together with adults, and/or the accommodation of unaccompanied minors in hotels, without the assistance of a guardian, particularly if it is for long periods of time (i.e. for weeks or even months) and without age-appropriate services, cannot be in the best interests of the child and violates Article 17.[604]

Unaccompanied children should not be deprived of their liberty and detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status or lack thereof.[605] The Committee also considers that the detention of children on the basis of their or their parents' immigration status is contrary to the best interests of the child.[606]

Measures must be taken to find alternatives to detention for asylum seeking families and to ensure that accommodation facilities for migrant children in an irregular situation, whether accompanied or unaccompanied, are appropriate and are adequately monitored.[607] Detention in police stations or in closed facilities, even for short periods of time, cannot be an alternative to proper shelter and accommodation suited to the age and the needs of unaccompanied children.[608]

Medical age assessments can have serious consequences for minors and the use of bone testing to determine the age of unaccompanied foreign minors is inappropriate and unreliable.[609] The use of such testing therefore violates Article 17§1 of the Charter.[610]

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[599] Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82

[600] European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §138

[601] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §157

[602] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §157

[603] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §157

[604] European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §§ 100-101

[605] Conclusions 2019, Andorra

[606] Conclusions XXI-4 (2019), United Kingdom

[607] Conclusions 2019, Hungary

[608] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §176

[609] European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §§ 106, 108

[610] European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §113

An ad hoc guardian for unaccompanied foreign minors must be appointed without delays.[611] An effective guardianship system for unaccompanied and separated migrant children is a pre-condition for ensuring the best interests and the care and assistance of such children, as required by Article 17§1 of the Charter.[612] States Parties should therefore appoint a guardian without undue delay, as soon as an unaccompanied or separated migrant child, including a refugee and asylum-seeking child, is identified.[613] Without a guardian, such children may be exposed to serious protection risks and may remain denied of enjoyment of a number of their rights, including effective access to legal assistance and to the asylum procedure.[614]

The guardian should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's needs are appropriately covered by, inter alia, the guardian acting as a link between the child and the authorities, agencies and individuals who provide the care.[615] With regard to the appointment, responsibilities and tasks of guardians, States Parties to the Charter should be guided by the principles contained in the Recommendation of the Committee of Ministers of the Council of Europe to member States on effective guardianship for unaccompanied and separated children in the context of migration, adopted on 11 December 2019 (CM/Rec(2019)11, Appendix, in particular Principles 2 and 3).[616]

Child poverty

The prevalence of child poverty in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of children and young persons to social, legal and economic protection.[617] The obligation of States Parties to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the improvement and eradication of child poverty and social exclusion.[618] Therefore, the Committee will take child poverty levels into account when considering the state's obligations under the terms of Article 17 of the Charter.[619]

Measures must be adopted to reduce child poverty, including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing etc.[620]

Child participation must be ensured in work directed towards combatting child poverty.[621]

Opinion of the ECSR

The Committee notes that this Article was adopted under the 1961 Charter.

[611] European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §158
[612] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §165
[613] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §165
[614] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, complaint No. 173/2018, decision on the merits of 26 January 2021, §165
[615] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, complaint No. 173/2018, decision on the merits of 26 January 2021, §165
[616] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, complaint No. 173/2018, decision on the merits of 26 January 2021, §165
[617] Conclusions 2019, Andorra
[618] Conclusions 2019, Andorra
[619] Conclusions 2019, Andorra
[620] Conclusions 2019, Andorra
[621] Conclusions 2019, Andorra

As regards the situation in Denmark, the Committee takes note of the information provided in the report, as well as the information relating to Article 17 of the 1961 Charter contained in the Committee's Conclusions XXII-4 (2023) concerning Denmark[622].

However, the Government has not provided information on, *inter alia*:

- the legal status of the child (e.g. measures taken by the State to reduce statelessness, to facilitate birth registration, particularly in the case of vulnerable groups);
- the possibility of appealing against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family;
- the existence of a procedure for lodging complaints about care and treatment in institutions;
- measures taken to protect children against violence, ill–treatment and abuse.
- the existence of measures to divert children from formal proceedings into effective diversion programmes;
- procedural safeguards in national legal proceedings involving children and young persons, including the right to legal assistance;
- the current situation of children and young persons in detention.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice meets the standards of the Charter.

Article 17§2 – *The right of children and young persons to social, legal and economic protection*

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Situation in Denmark

The Government indicates in its report that all pupils and students in Denmark have the right to an education that meets the specific needs of the individual child. All children residing in Denmark are subject to compulsory primary and lower secondary education in accordance with the Folkeskole Act.

In relation to upper secondary education and vocational education and training, the Government states that Danish legislation is generally based on the assumption that pupils and students have a residence permit. A student who loses the right to a residence permit will be able to complete his/her education if this is otherwise possible. In the case of vocational education and training, the student will have to cover the educational expenses if the residence permit is lost.

ECSR interpretation (DIGEST)

[622] https://rm.coe.int/conclusions-xxii-4-2023-denmark-en-2769-0339-2521-1/1680aedd43

Appendix: It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.[623]
This does not imply an obligation to provide compulsory education up to the above-mentioned age.[624]

Article 17 requires States Parties to establish and maintain an education system that is both accessible and effective.[625]

Quality of teaching

States Parties must establish and maintain an accessible and effective system of education.[626] A functioning system of primary and secondary education includes an adequate number of schools fairly distributed over the geographical area (in particular between rural and urban areas).[627] Class sizes and the teacher pupil ratio must be reasonable.[628] There must be a mechanism to control the quality of teaching and the methods used in public as well as private educational institutions.[629]

Education must be compulsory until the minimum age for admission to employment.[630]

The Charter provides that the obligations under this provision may be met directly or through the involvement of private actors.[631] In this respect, the Committee is mindful of the *Abidjan Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*.[632] It recalls that the requirement that States respect the freedom of parents to choose an educational institution other than a public institution leaves unchanged the obligation under the Charter to provide free quality public education.[633] Similarly, the offer of educational alternatives by private actors must not be to detrimental to the allocation of resources towards, or otherwise undermine the accessibility and quality of, public education.[634] Moreover, States are required to regulate and supervise private sector involvement in education strictly, making sure that the right to education is not undermined.[635]

Personal scope

Equal access to education must be ensured for all children. In this respect particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage months, children deprived of their liberty, etc.[636] Where necessary, special measures should be taken to ensure equal access to education for these children.[637] However, special measures for

[623] Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163
[624] Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163
[625] Conclusions 2003, Bulgaria
[626] Conclusions 2003, Bulgaria
[627] Conclusions 2003, Bulgaria
[628] Conclusions 2003, Bulgaria
[629] Conclusions 2003, Bulgaria
[630] Conclusions 2003, Statement of interpretation on Article 17
[631] Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education
[632] Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education
[633] Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education
[634] Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education
[635] Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education
[636] Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §34, citing Conclusions 2003, Bulgaria
[637] Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §34 1846 Conclusions 2011, Slovakia

Roma children should not involve the establishment of separate schools or classes reserved for this group.[1846]

As regards children with disabilities, their right to education is guaranteed both by paragraphs 1 and 2 of Article 17 as well as by Article 15§1 and Article 10.[638] However, in view of the particularities of these different provisions, Article 15 will apply as a priority. When States Parties have adopted Article 15, the Committee will examine the issue of access to education for children with disabilities under that provision.[639] Children with disabilities should have access to inclusive education in terms of Article 17[640] (as well as such access required in terms of Article 15).

Access to education is crucial for every child's life and development.[641] The denial of access to education will exacerbate the vulnerability of an irregularly present child.[642] Therefore, children, whatever their residence status, come within the personal scope of Article 17§2.[643] Furthermore, States Parties are required, under Article 17§2 of the Charter, to ensure that children irregularly present in their territory have effective access to education in keeping with any other child, even for those over the age of compulsory education.[644]

States Parties are required, under Article 17§2 of the Charter, to ensure that children irregularly present in their territory have effective access to education in keeping with any other child.[645] Access to education is crucial for every child's life and development.[646] The denial of access to education will exacerbate the vulnerability of an unlawfully present child.[647] The non-formal education arrangements provided by non-state actors (e.g. NGOs) cannot be a substitute to the integration of migrant children in the public education system.[648]

Cost of education

According to Article 17§2, primary and secondary education must be free of charge.[649] This covers the basic education system.[650] In addition, hidden costs such as books or uniforms must be reasonable and assistance must be available to limit their impact on the most vulnerable groups.[651]

[638] Conclusions 2003, Bulgaria; European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §25
[639] Conclusions 2019, Andorra
[640] Conclusions 2019, Bosnia and Herzegovina
[641] *Médecins du Monde* - International v. France, Complaint No. 67/2011, decision on the merits of 11 September 2012, §128
[642] Conclusions 2011, Statement of interpretation on Article 17§2
[643] Conclusions 2011, Statement of interpretation on Article 17§2
[644] *Médecins du Monde* - International v. France, Complaint No. 67/2011, decision on the merits of 11 September 2012, §128; European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §125
[645] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §201
[646] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §201
[647] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §201
[648] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §207
[649] Conclusions 2003, Bulgaria
[650] Conclusions 2003, Bulgaria
[651] Conclusions 2003, Bulgaria

School attendance

Measures must be taken to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.[652]

States Parties have a margin of appreciation when devising and implementing measures to combat truancy.[653]

Anti-bullying measures

Measures must be taken to introduce anti bullying policies in schools, i.e., measures relating to awareness raising, prevention and intervention.[654]

The voice of the child in education

Securing the right of the child to be heard within education is crucial for the realisation of the right to education in terms of Article 17§2.[655] This requires States Parties to ensure child participation across a broad range of decision-making and activities related to education, including in the context of children's specific learning environments.[656]

Opinion of the ECSR

The Committee notes that this Article was accepted under the 1961 Charter.

As regards the situation in Denmark, the Committee notes the measures in place to provide free primary and secondary education to children and young persons.

However, the Government has not submitted information on the following points:

- whether an adequate number of schools is fairly distributed throughout le country;
- the size of classes and the teacher-pupil ratio;
- the number of children who drop out or fail to complete compulsory education, and the rate of absenteeism;
- whether there is a mechanism for monitoring the quality of teaching and the methods used in both public and private educational institutions;
- measures taken to introduce anti-bullying policies in schools;
- whether particular attention is paid to children belonging to vulnerable groups and to children irregularly present in the territory;
- the participation of children in a broad range of decision-making and activities related to education.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice meets the standards of the Charter.

Article 19§11 – *The right of migrant workers and their families to protection and assistance*

[652] Conclusions 2003, Bulgaria
[653] European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 82/2012, decision on the merits of 19 March 2013, §31
[654] Conclusions 2019, Andorra
[655] Conclusions 2019, Andorra
[656] Conclusions 2019, Andorra

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

11. to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;

Situation in Denmark

In the written information submitted in August 2023, the Government states that Danish language training is a central part of the integration effort in Denmark. All newly arrived adult immigrants are entitled to free Danish language training. Some immigrants are obliged to take Danish language courses. This is the case for immigrants under the self-sufficiency and repatriation programme or introduction programme, who receive social benefits. For other groups of immigrants, primarily workers or students, Danish language training is an offer, and participation in training is optional for this group.

For both groups the language training offer consists of up to five years of language training, which corresponds to a total of 1,2 years of full-time language training.

As explained in the report, the local municipalities are responsible for providing a language training offer to newly arrived immigrants in the municipality and this must be done no later than one month after the municipality has assumed responsibility for the immigrant.

Thus, according to the Government, Danish legislation relating to adult immigrants complies with Article 19§11 of the revised Charter, and is considered adequate in the event of Danish ratification of Article 19§11 of the revised Charter.

Furthermore, education in Danish is available to all children of the compulsory school age, cf. section 5 (2) no. 1 (a) and section 5 (6) of the Folkeskole Act. The cost of teaching Danish as a second language is covered by the local authorities. If the child is in the care of the Danish Immigration Service, the education is provided in accordance with the Immigration Act.

The Youth School Act contains provisions on the training of young immigrants in the Danish language and Danish social conditions, cf. section 3 (1) no. 4, and provisions on Danish education for newly arrived immigrants aged 18 to 25, as defined in the Danish Act on education for adult immigrants et. al, cf. section 3 (2) no. 4.

However, it follows from section 2 (1), paragraph 2, of the Youth School Act that the [youth school] offer must be available to young people aged 14 to 18 who are registered in the municipal population register. This provision includes the condition that the young person must hold a legal residence permit. If the young person does not hold one, he/she must contact the Danish Immigration authorities.

ECSR interpretation (DIGEST)

Under this provision, States Parties should promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age.[2012] The teaching of the national language of the receiving state is the main means by which migrants and their families can integrate into normal employment and society at large.[657]

[657] Conclusions 2002, France

A requirement to pay substantial fees is not in conformity with the Charter: States Parties are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible.[658]

Teaching the language of the host country to primary and secondary school students throughout the school curriculum is not enough to satisfy the obligations laid down by Article 19§11.[659] States Parties must make special efforts to set up additional assistance for children of immigrants who have not attended primary school right from the beginning and who therefore lag behind their fellow students who are nationals of the country.[660]

States Parties shall encourage the teaching of the national language in the workplace, in the voluntary sector or in public establishments such as universities.[661] Such services shall be free of charge so as not to exacerbate the disadvantaged position of migrant workers in the labour market.[662]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the measures already in place and considers that there are no obstacles to the immediate acceptance of Article 19§11.

Article 19§12 – *The right of migrant workers and their families to protection and assistance*
With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

Situation in Denmark

In the written information submitted in August 2023, the Government indicates that, currently, there is only an obligation to provide mother-tongue teaching to children of EU/EEA citizens, British citizens with residence permit according to the EU-UK Withdrawal Agreement and children whose mother-tongue is Faroese or Greenlandic (cf. section 5 (6) of the Folkeskole Act). The Government therefore considers that reservations would be necessary for this provision.

ECSR interpretation (DIGEST)

States Parties should promote and facilitate the teaching of the languages most represented among the migrants present on their territories within their school systems or in other contexts such as voluntary associations or non-governmental organisations.[663]

For a comprehensive assessment of the situation under this provision, the Committee takes into consideration, in particular, the following detailed information:
- statistics on major migrant groups,[664]

[658] Conclusions 2011, Norway
[659] Conclusions 2002, France
[660] Conclusions 2002, France
[661] Conclusions 2002, France
[662] Conclusions 2002, France
[663] Conclusions 2002, Italy; Conclusions 2011, Armenia; Conclusions 2011, Statement of Interpretation on Article 19§12
[664] Conclusions 2019, Albania

- whether any measures or projects have been put in place in the framework of the school system or other structures to provide education of migrants' mother tongue,[665]
- whether the children of migrants have access to multilingual education and on what basis; what steps that government has taken to facilitate the access of migrants' children to these schools,[666]
- whether any non-governmental organisations or other bodies, such as local associations, cultural centres or private initiatives that teach migrant workers' children the language of their country of origin, and whether they receive support.[667]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the information provided in the report.

However, no statistical or other information has been provided on the major migrant groups in Denmark, the number of children being taught their mother tongue and the structures established to provide access to education in the migrants' mother tongue.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice meets the standards of the Charter. It encourages the Government to continue its efforts and to consider accepting Article 19§12 in the near future.

Article 24 – *The right to protection in cases of termination of employment*

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

a) the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;

b) the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

Situation in Denmark

The Government's report indicates that the provision is inspired by ILO Convention Nr. 158 of 1982 which Denmark has not ratified. With regard to the independent complaints body, reference is made to article 8 of the ILO Convention. Additionally, Denmark entered reservations regarding Article 24 of the revised Charter at the time of its signature.

According to the Danish Government, social partners play a crucial role in regulating wages and working conditions. The Danish labour market model is founded on the premise that employers and workers are organised in strong associations and unions that represent the broad interests of their members in collective agreement negotiations. Pay and working hours are primarily regulated by collective agreement or individual employment contracts. As far as possible, the state refrains from intervening in the regulation of pay and working conditions. In

[665] Conclusions 2019, Albania
[666] Conclusions 2019, Albania
[667] Conclusions 2019, Albania

Denmark, legislation and collective agreements do not protect all workers against unfair dismissal. An obligation to ensure that all workers are protected against unfair dismissal would interfere with the scope for social partners to enter into collective agreements.

ECSR interpretation (DIGEST)

Scope of protection

Article 24 relates to termination of employment at the initiative of the employer.[668] A situation where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, does not fall within the scope of this provision. However, the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted (but not mandated) by law, is not justified.[669]

Definition of an "employee"

All workers who have signed an employment contract are entitled to protection in the event of termination of employment.[670] However, according to the Appendix, the State Party may exclude one or more of the following categories:

- workers engaged under a contract of employment for a specified period of time or a specified task.[671] In the public sector, the non-renewal of fixed-term contracts or the fact that such contracts are not converted into indefinite duration contracts, even though there are vacant positions within the workforce, cannot be regarded as dismissals contrary to Article 24 of the Charter.[672]
- workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration.[673] Under Article 24, exclusion of employees from protection against dismissal for six months during the probationary period is not reasonable if applied indiscriminately, regardless of the employee's qualification.[674] A one year period of exclusion is manifestly unreasonable and therefore not in conformity with the Charter.[675]
- workers engaged on a casual basis for a short period.[676]

This list is exhaustive. Exclusion of any other category of employee, such as employees having reached the normal retiring age, from protection against unfair dismissal is not in conformity with the Charter.[677]

Safeguards must exist to ensure that employers hiring workers in the platform or gig economy do not circumvent labour law as regards protection against dismissal on the grounds that a person performing work for them is self-employed, when in reality, after examination of the conditions under which such work is provided it is possible to identify certain indicators of the existence of an employment relationship.[678]

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[668] Conclusions 2012, Statement of Interpretation on Article 24
[669] Conclusions 2020, Malta ; Conclusions 2012, Statement of Interpretation on Article 24
[670] Conclusions 2003, Italy
[671] Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163
[672] *Associazione Professionale e Sindacale* (ANIEF) v. Italy, Complaint No. 146/2017, decision on the merits of 7 July 2020, §§ 104-106
[673] Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163
[674] Conclusions 2012, Ireland; Conclusions 2012, Cyprus; Conclusions 2003, Italy
[675] Conclusions 2012, Ireland
[676] Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163
[677] Conclusions 2012, Ireland
[678] Conclusions 2020, Albania

Definition of valid reasons

Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship.[679] Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).[680]

i. reasons connected with the capacity or conduct of the employee

A prison sentence delivered in court can be a valid ground for termination of an employment contract if such sentence is delivered for employment-related offences.[681] This is not the case with prison sentences for offences unrelated to the person's employment, which cannot be considered valid reasons unless the length of the custodial sentence prevents the person from carrying out their work.[682]

ii. certain economic reasons

Economic reasons for dismissal must be the reasons based on the operational requirements of the undertaking, establishment or service.[683] The assessment relies on the domestic courts' interpretation of the law.[684] The courts must have the competence to review a case on the economic facts underlying the reasons of dismissal and not just on issues of law.[685] Article 24 of the Charter requires a balance to be struck between an employer's right to direct/run their enterprise as they see fit and the need to protect the rights of the employees.[686]

In cases of collective dismissals due to a reduction or change in the company's activities caused by the Covid19 crisis, due respect must be accorded to the Charter requirement that workers' representatives are informed and consulted in good time before redundancies and that the purpose of such consultations is respected in redundancy procedures, namely that the workers are made aware of reasons and scale of planned redundancies and that the position of the workers is taken into account when their employer is planning collective redundancies.[687]

Prohibited dismissals

A series of Charter provisions require increased protection against termination of employment on certain grounds:

- discrimination (Articles 1§2, 4§3, and 20);[688]
- trade union activities (Article 5);[689]
- participation in strikes (Article 6§4);[690]
- maternity (Article 8§2);[691]
- disability (Article 15);[692]

[679] Conclusions 2012, Statement of Interpretation on Article 24
[680] Conclusions 2012, Statement of Interpretation on Article 24
[681] Conclusions 2008, Lithuania
[682] Conclusions 2008, Lithuania
[683] Conclusions 2016, Latvia
[684] Conclusions 2016, Latvia citing Conclusions 2012, Turkey
[685] Conclusions 2012, Turkey
[686] Conclusions 2016, Latvia
[687] Statement on Covid-19 and social rights adopted on 24 March 2021
[688] Conclusions 2016, Latvia
[689] Conclusions 2016, Latvia
[690] Conclusions 2016, Latvia
[691] Conclusions 2016, Latvia
[692] Conclusions 2016, Latvia

- family responsibilities (Article 27);[693]
- worker representation (Article 28).[694]

Only two reasons are examined under Article 24, namely:

i. the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

National legislation or case law must contain express safeguards against retaliatory dismissal.[695] Safeguarding persons who resort to the courts or other competent authorities to enforce their rights against reprisals is essential in any situation in which a worker alleges a violation of the law.[696] In the absence of any explicit statutory ban, States Parties must be able to show how national legislation conforms to the requirement of the Charter.[697]

ii. temporary absence from work due to illness or injury.

A time limit can be placed on protection against dismissal in such cases.[698] Absence from work can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee.[699]

As regards dismissal without notice in the event of permanent invalidity, the following factors are taken into consideration for the assessment:

- is dismissal without notice for reasons of permanent invalidity permitted regardless of the origin of the invalidity? In particular, may this occur in cases of employment injuries or occupational diseases?[700]
- are employers required to pay compensation for termination in such cases?[701]
- if, despite the permanent invalidity, the worker can still carry out light work, is the employer required to offer a different placement? If the employer is unable to meet this requirement, what alternatives are available?[702]

iii. Dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age

States Parties should take adequate measures to ensure protection for all workers against dismissal on grounds of age.[703]

Dismissal on grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as a legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary.[704]

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[693] Conclusions 2016, Latvia
[694] Conclusions 2016, Latvia
[695] Conclusions 2016, Latvia
[696] Conclusions 2016, North Macedonia
[697] Conclusions 2016, Russian Federation
[698] Conclusions 2012, Ukraine
[699] Conclusions 2016, Latvia
[700] Conclusions 2008, Azerbaijan
[701] Conclusions 2008, Azerbaijan
[702] Conclusions 2008, Azerbaijan
[703] Conclusions 2007, Statement of Interpretation on Article 24
[704] Conclusions 2008, Lithuania; Conclusions 2007, Statement of Interpretation on Article 24

Legislation which enables dismissal directly on grounds of age and does not, therefore, effectively guarantee the right to protection in cases of termination of employment, is contrary to the Charter.[705] The list of prohibited reasons set out in the appendix to Article 24 is not exhaustive.[706]

Adequate compensation

Right of appeal

Any employee who considers themself to have been dismissed without valid reason must have the right to appeal to an impartial body.[707] The burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer.[708]

Damages

Article 24 of the Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief.[709] In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation sufficient both to deter the employer and proportionate to the damage suffered by the victim.[710]

Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive areas in principle contrary to the Charter.[711] If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.[712]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the information provided in the report.

However, the Committee considers that further information on the existing legislation and collective agreements regulating the protection of workers in cases of termination of employment is necessary to assess whether the situation in law and practice meets the standards of the Charter. It encourages the Government to continue its efforts and to consider accepting Article 24.

Article 25 – *The right of workers to the protection of their claims in the event of the insolvency of their employer*

[705] *Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011, decision on the merits of 2 July 2013, §§ 86, 89, 97, 99
[706] Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163
[707] Conclusions 2005, Cyprus, France, Estonia
[708] Conclusions 2008, Statement of Interpretation on Article 24 and Statement of Interpretation on the burden of proof in discrimination cases
[709] Conclusions 2016, North Macedonia
[710] Conclusions 2016, North Macedonia, Finnish Society of Social Rights v. Finland, decision on the merits of 8 September 2016
[711] Conclusions 2012, Slovenia; Conclusions 2012, Finland, Finnish Society of Social Rights v. Finland, decision on the merits of 8 September 2016
[712] Conclusions 2012, Slovenia; Conclusions 2012, Finland, Finnish Society of Social Rights v. Finland, decision on the merits of 8 September 2016

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

Situation in Denmark

In the written information submitted in August 2023, the Government indicates that this article is inspired by ILO Convention No. 173 on the "Protection of workers' claims" of 1992 and EC Directive No. 80/1987 "on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer". Denmark has not ratified ILO Convention No. 173.

In Denmark, "Lønmodtagernes Garantifond" (LG) ensures that employees are paid their salary, holiday pay, and other things if the company where they are employed becomes insolvent or is closed down for some other reason. Lønmodtagernes Garantifond means "Workers Salary Guarantee Fund" and is established in accordance with the Insolvency Directive (Directive 2008/94/EC).

ECSR interpretation (DIGEST)

Article 25 of the Charter guarantees individuals the right to protection of their claims in the event of the insolvency of their employer.[713]

The term "insolvency" includes both situations in which formal insolvency proceedings have been opened relating to an employer's assets with a view to the collective reimbursement of their creditors, and situations in which the employer's assets are insufficient to justify the opening of formal proceedings.[714]

In the event of the insolvency of their employer, workers' claims must be guaranteed by a guarantee institution or by any other effective form of protection.[715] States Parties which have accepted this provision benefit from a margin of discretion as to the form of protection of workers' claims; Article 25 does not require the existence of a specific guarantee institution.[716]

The appendix to the Charter stipulates, *inter alia*, the minimum amounts of wages and paid absence that must be covered depending on whether recourse is had to a "privilege system" (three months prior to the insolvency) or a "guarantee system" (eight weeks).[717]

The protection afforded, whatever its form, must be adequate and effective including in situations where the assets of an enterprise are insufficient to cover salaries owed to workers.[718] Guarantees must exist for workers that their claims will be satisfied in such cases.[719]

Employees' claims must take precedence over other creditors both under formal bankruptcy proceedings as well as in those cases when an enterprise closes down without formally being declared insolvent.[720]

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[713] Conclusions 2003, France
[714] Conclusions 2012, Statement of Interpretation Article 25
[715] Conclusions 2012, Statement of Interpretation Article 25
[716] Conclusions 2003, France
[717] Conclusions 2012, Statement of Interpretation Article 25
[718] Conclusions 2003, France
[719] Conclusions 2012, Ireland
[720] Conclusions 2012, Albania

A privilege system, on its own, cannot be regarded as an effective form of protection in the meaning of Article 25.[721] While a privilege system may amount to effective protection in cases where formal insolvency proceedings are opened, this is not so in situations where the employer no longer has any assets.[722] It serves no purpose to have a privilege system when there are no assets to divide among creditors and consequently States Parties must provide for an alternative mechanism to effectively guarantee workers' claims in those situations.[723]

Therefore, situations where there is no alternative to the privilege system are not in conformity with the Charter as such a system does not itself provide effective guarantees of protection of workers' claims in situations where the employer no longer has any assets.[724]

A privilege system where workers' claims were ranked below mortgage obligations, foreclosure on property and bankruptcy costs does not amount to an effective protection under the Charter.[725]

In order to demonstrate the adequacy in practice of the protection, States Parties must provide information, inter alia, on the average duration of the period from which a claim is lodged until the worker is paid and on the overall proportion of workers' claims which are satisfied by the guarantee institution.[726]

States Parties may limit the protection of workers' claims to a prescribed amount which shall be of a socially acceptable level.[727] Three times the average monthly wage of the employee is an acceptable level.[728] In addition, the employer is also obliged to pay for claims in respect of other types of paid absence (holidays, sick leave), at not less than three months under a privilege system and eight weeks under a guarantee system.[729]

Certain categories of employees may, exceptionally, be excluded from Article 25 protection because of the special nature of their employment relationship.[730] However, it is for the Committee to determine on each occasion whether the nature of the employment relationship warrants such an exclusion.[731] Under no circumstances may this be a reason for the exclusion of part-time employees and employees on fixed-term or other temporary contract.[732]

Exclusion of employees having worked less than one year for the same employer from protection against insolvency of their employer is contrary to the Charter.[733]

Opinion of the ECSR

As regards the situation in Denmark, the Committee notes that there are provisions in place to ensure the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer.

However, the Government has not provided any information on the following points:

[721] Conclusions 2012, Statement of Interpretation Article 25
[722] Conclusions 2012, Statement of Interpretation Article 25
[723] Conclusions 2012, Statement of Interpretation Article 25
[724] Conclusions 2012 and 2020, Albania
[725] Conclusions 2003, Bulgaria
[726] Conclusions 2012, Ireland
[727] Conclusions 2012, Ireland
[728] Conclusions 2012, Slovakia, citing Conclusions 2005, Estonia
[729] Conclusions 2012, Slovakia
[730] Conclusions 2008, Statement of Interpretation on Article 25
[731] Conclusions 2008, Statement of Interpretation on Article 25
[732] Conclusions 2008, Statement of Interpretation on Article 25
[733] Conclusions 2012, Turkey

- whether workers' claims take precedence over other creditors in those cases where an enterprise closes down without being formally declared insolvent;
- whether workers' claims are subordinated to mortgage obligations, property foreclosures and bankruptcy costs;
- the average duration of the period between the filing of a claim and payment to the worker, as well as the overall proportion of workers' claims that are satisfied;
- whether part-time employees and employees on fixed-term or other temporary contracts are excluded from the protection offered.

On this basis, and subject to more detailed information on the situation in law and practice, the Committee considers that there appear to be no major obstacles to Denmark's acceptance of Article 25.

Article 26§1 – *The right to dignity at work*

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;

Situation in Denmark

The Government provided the following information in its report:

General protection from sexual harassment

In Denmark, sexual harassment is prohibited in general by the Act on Equal Treatment of Men and Women as regards Employment (henceforth the Act). According to paragraph 1, sub-paragraph 6 of the Act, sexual harassment is defined as any form of unwanted verbal, non-verbal or physical behaviour with sexual undertones that is displayed with the purpose or effect of violating a person's dignity, in particular by creating a threatening, hostile, degrading, humiliating or uncomfortable climate.

Paragraph 4 of the Act stipulates that workers are entitled to equal terms of employment, including a ban on sexual harassment as defined by the Act. The explicit mention of sexual harassment in the Article was added in 2018 to further emphasise the prohibition of sexual harassment and to raise awareness for both workers and employers. Paragraph 4 entails an obligation for the employer to provide a harassment-free environment. Employers are obliged to reasonably protect their employees against sexual harassment and violations committed by other employees. The rules ensure that any employer employing men and women shall treat them equally as regards working conditions. This also applies in the event of dismissal.

Furthermore, the 2018 amendments to the Act increased the compensation provided to victims of sexual harassment, according to the Government.

Finally, Denmark notes that the Tripartite Agreement of 4 March 2022 outlines 17 initiatives to combat sexual harassment in the workplace, several of which relate to raising awareness and preventing sexual harassment at company level.

Enforcement

The Board of Equal Treatment is responsible for examining complaints pertaining to differential treatment, including those that constitute violations of the Act on Equal Treatment. The Board

has the authority to award compensation to the aggrieved party, and can annul the dismissal of a worker. The decision made by the Board is legally binding but can be appealed against in a court of law.

Burden of proof

In Denmark, cases of sexual harassment are covered by the rules on shared burden of proof. This means that if an employee can demonstrate factual circumstances that give reason to suspect that direct or indirect discrimination has taken place, it is for the employer to prove that the principle of equal treatment has not been violated. This follows from Article 16 a of the Act, which is a special rule in regard to the burden of proof in cases of sexual harassment.

Working Environment Act

Article 1 of the Executive Order of the Working Environment Act states that the purpose of the working environment rules is to ensure a safe and healthy physical and mental working environment that is at all times in accordance with the technical and social development of society. According to paragraph 38, work shall be planned, organised and carried out in such a way as to ensure health and safety, and approved standards relevant to health and safety shall be complied with.

In November 2020, the Executive Order on Psychological Working Environment came into force. This Executive Order gathers all rules regarding mental health and psychological influences in the working environment, but does not create new rules or obligations. However, the articles in the Executive Order do contain new rules that clarify the existing obligations.

Article 23 of the Executive Order explicitly mentions sexual harassment in relation to offensive behaviour and actions, and Article 22 clarifies the employer's obligation to ensure that work is at all times planned, organised and carried out in a manner that protects workers from offensive behaviour and actions.

The Danish Working Environment Authority enforces the rules covering health and safety at work, and may require immediate action to ensure that workers are not subjected to sexual harassment. Fines can be issued if the rules are violated, and in serious cases, the Authority may initiate criminal proceedings and impose imprisonment.

The Danish Working Environment Authority is also obliged to provide guidance to companies, the public, and workers' and employers' organisations on all occupational health and safety issues. This includes guidance on sexual harassment. In 2011, the Danish Working Environment Authority published a written guide on this topic, which is currently being updated. Furthermore, the Danish Working Environment Authority conducts information, awareness-raising and prevention campaigns in the workplace or in relation to work with a view to combatting sexual harassment, in particular in situations where it is likely to occur.

ECSR interpretation (DIGEST)

Appendix: It is understood that this article does not require that legislation be enacted by the Parties.[734]

Sexual harassment is not necessarily a form of discrimination based on gender but always qualifies as a breach of equal treatment manifested mainly by an insistent preferential or retaliatory attitude, directed towards one or more persons, or by an insistent attitude of other nature, which may undermine those persons' dignity or harm their career.[735]

[734] Appendix to the European Social Charter (Revised) - European Treaty Series - No. 163
[735] Conclusions 2003, Bulgaria; Conclusions 2005, Republic of Moldova

Irrespective of admitted or perceived grounds, harassment creating a hostile working environment shall be prohibited and repressed in the same way as acts of discrimination, independently from the fact that not all harassment behaviours are acts of discrimination, except when this is explicitly presumed by law.[736]

The Appendix to Article 26§1 specifies that States Parties have no obligation to enact legislation relating specifically to harassment, provided that the legal framework, as interpreted by the relevant national authorities ensures an effective protection in law and in practice against harassment in the workplace or in relation to work.[737]

The effectiveness of legal protection against sexual harassment depends on how the domestic courts interpret the law as it stands.[738]

Prevention

Article 26§1 requires States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) against sexual harassment.[739] In particular, they should inform workers about the nature of the behaviour in question and the available remedies.[740]

Social partners should be consulted on measures to promote awareness, knowledge and prevention measures vis-à-vis sexual harassment in the workplace.[741]

Liability of employers and remedies

There is no need for a State's legislation to make express reference to harassment where that State's law encompasses measures making it possible to afford employees effective protection against the various forms of discrimination.[742]

This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights.[743]

Employers may be held liable towards persons working for them who are not their employees, such as subcontractors, self-employed persons, or customers and visitors, and who have suffered sexual harassment committed on their business premises or by employees answerable to them.[744]

The situation is not in conformity with Article 26§1 of the Charter where it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against sexual harassment in relation to work.[745]

Burden of proof

Under civil law, effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges.[746] The situation will not be in

[736] Conclusions 2014, Georgia
[737] Conclusions 2014, Georgia
[738] Conclusions 2007, Slovenia
[739] Conclusions 2018, Lithuania; Conclusions 2005, Republic of Moldova
[740] Conclusions 2005, Lithuania; Conclusions 2003, Italy
[741] Conclusions 2018, Ukraine
[742] Conclusions 2003, Bulgaria; Conclusions 2005, Republic of Moldova
[743] Conclusions 2007, Statement of Interpretation on Article 26§2
[744] Conclusions 2014, Finland
[745] Conclusions 2018, Lithuania; Conclusions 2018, Georgia
[746] Conclusions 2018, Azerbaijan; Conclusions 2014, Azerbaijan

conformity with Article 26§1 of the Charter where there is no shift in the burden of proof in sexual harassment cases.[747]

Damages

Victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage.[748] These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.[749]

In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or have been pressured to resign due to the unfriendly environment determined by the sexual harassment.[750]

A lack of appropriate and effective redress (compensation and reinstatement) in cases of sexual harassment is not in conformity with Article 26§1.[751]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the detailed information on the measures in place to promote awareness, information and prevention of sexual harassment, as well as to protect workers from such conduct. Furthermore, the Committee notes that Denmark ratified the ILO Violence and Harassment Convention, 2019 (No. 190) on 6 June 2024. The Convention will enter into force for Denmark on 6 June 2025.

In view of these requirements, the Committee considers that Denmark is in a position to accept this provision, taking into account the measures which are already in place or being developed. The Committee considers that there appear to be no obstacles to the immediate acceptance of Article 26§1.

Article 26§2 – *The right to dignity at work*

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Situation in Denmark

The Government's report indicates that workers in Denmark are protected from negative and offensive actions in accordance with the provisions stemming from the Executive Order of the Working Environment Act and the Executive Order on Psychological Working Environment. The Working Environment Act ensures this protection in general, while the Executive Order on Psychological Working Environment contains rules that clarify the obligations under the Act. As stated in paragraph 1 of the Executive Order of the Working Environment Act, the purpose of the working environment rules is to ensure a safe and healthy physical and mental working environment that is at all times in accordance with the technical and social

[747] Conclusions 2018, Azerbaijan
[748] Conclusions 2018, Turkey; Conclusions 2005, Republic of Moldova
[749] Conclusions 2018, Turkey; Conclusions 2007, Slovenia
[750] Conclusions 2018, Turkey; Conclusions 2003, Bulgaria
[751] Conclusions 2018, Ukraine

developments of society. Furthermore, paragraph 38 stipulates that work shall be planned, organised and carried out in such a way as to ensure health and safety, and that approved standards relevant to health and safety shall be complied with.

Chapter 2 of the Executive Order on Psychological Working Environment states that employers have a duty to ensure the health and safety of their employees in all aspects of the psychosocial working environment. Chapter 3 contains specific rules about certain factors considered of particular importance to the workers' psychosocial well-being.
Article 22 explicitly states that work must always be planned, organised and carried out in such a way as to ensure the health and safety of individuals with regard to offensive behaviour and actions. These are defined in paragraph 23 as actions by one or more individuals within a company which, either grossly or repeatedly, expose one or more other persons in the company to bullying, sexual harassment or other degrading conduct at work. The behaviour in question must be perceived as degrading by the victim(s) in order to be considered objectionable.

It is also the duty of employers to provide adequate protection of their workforce from violence and offensive actions committed by third parties, such as customers and business partners. This obligation applies to all risks of violence at work, both during and outside working hours, if there is a concrete risk arising from the nature of the work being performed.

The Danish Working Environment Authority enforces the rules pertaining to the working environment. In instances where workers are subjected to offensive behaviour and actions, the Authority may require immediate action to ensure their safety and well-being. Employers may be held liable and fined in case of violation of the rules.

The Danish Working Environment Authority also conducts information campaigns about offensive behaviour and actions – both through its official website and social media such as Facebook or Instagram, as this broadens the reach of the information.

The Danish Working Environment Authority has established a hotline which is open for the purpose of reporting incidents of bullying, abusive behaviour and sexual harassment. It also publishes guidelines and other material to assist employers and employees in combatting bullying and sexual harassment.

The Danish social partners (employers' and workers' organisations) also have an important role to play in ensuring that information on the prevention of offensive behaviour and actions is disseminated to both companies and the workers, according to the Government. The social partners have cooperated on several campaigns and provide educational programmes for workers and employers, the aim of which is to address and prevent negative and offensive behaviour and actions that can occur in the workplace. Workers can also seek individual assistance from their trade unions if they experience offensive behaviour. Trade unions have access to all available remedies to seek reparation for any damage caused.

Many collective agreements also contain provisions regarding offensive behaviour and actions. These cover the vast majority of workers in Denmark and are enforced by the social partners and through labour courts. The courts can award both pecuniary and non-pecuniary damages to the victim.

ECSR interpretation (DIGEST)

Appendix: It is understood that this article does not require that legislation be enacted by the Parties.[752] It is understood that paragraph 2 does not cover sexual harassment.[753]

[752] Appendix to the European Social Charter (Revised) - European Treaty Series - No. 163
[753] Appendix to the European Social Charter (Revised) - European Treaty Series - No. 163

Article 26§2 of the Charter establishes a right to protection of human dignity against harassment creating a hostile working environment related to a specific characteristic of a person.[754] States Parties are required to take all necessary preventive and compensatory measures to protect individual workers against recurrent reprehensible or distinctly negative and offensive actions directed against them at the workplace or in relation to their work, since these acts constitute humiliating behaviour.[755]
Irrespective of admitted or perceived grounds, harassment creating a hostile working environment characterized by the adoption towards one or more persons of persistent behaviours which may undermine their dignity or harm their career shall be prohibited and repressed in the same way as acts of discrimination.[756] Harassment should be prohibited and repressed even when the harassing behaviour does not amount to discrimination.[757]

The Appendix to Article 26§2 specifies that States Parties have no obligation to enact legislation relating specifically to harassment.[758] However, States Parties to the revised Charter having accepted Article 26§2 shall ensure an adequate legal protection of employees against distinctly negative and offensive actions or conduct at work.[759] This protection shall include the right to challenge the offensive behaviour before an independent body, the right to obtain adequate compensation and the right not to be discriminated for having pursued the respect of these rights.[760]

Prevention

As far as awareness raising is concerned, the requirements are the same as under Article 26§1.[761] Article 26§2 imposes positive obligations on States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral harassment, in particular in situations where harassment is likely to occur.[762] In particular, they should inform workers about the nature of the behaviour in question and the available remedies.[763] Specific measures to raise awareness about harassment in the workplace may include public education programmes, campaigns, cooperation with NGO's and employers' organisations, provision of online sources of information on harassment, etc.[2289] A failure to take any preventative action, training or awareness-raising in such situations may amount to a violation of Article 26§2.[764]
Liability of employers and remedies

It must be possible for employers to be held liable in case of harassment involving employees under their responsibility, or on premises under their responsibility, when a person not employed by them (independent contractor, self-employed worker, visitor, client, etc.) is the victim or the perpetrator.[765]
The situation is not in conformity with Article 26§2 of the Charter where employers cannot be held liable in case of harassment involving employees under their responsibility, or on

[754] Conclusions 2003, Bulgaria
[755] Conclusions 2003, Bulgaria
[756] Conclusions 2007, Statement of Interpretation on Article 26§2
[757] Conclusions 2007, Statement of Interpretation on Article 26§2
[758] Appendix to the European Social Charter (Revised) - European Treaty Series - No. 163
[759] Conclusions 2005, Republic of Moldova
[760] Conclusions 2005, Republic of Moldova
[761] Conclusions 2018, Andorra; Conclusions 2003, Slovenia
[762] Conclusions 2014, Azerbaijan; Conclusions 2005, Republic of Moldova
[763] Conclusions 2005, Republic of Moldova 2289 Conclusions 2018, Serbia
[764] *Confederazione Generale Italiana del Lavoro (CGIL)* v. Italy, Complaint No 91/2013, decision on the merits of 12 October 2015, §295
[765] Conclusions 2014, Finland

premises under their responsibility, when a person not employed by them is the victim or the perpetrator.[766]

Burden of proof

Under civil law, effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges.[767]

Damages

Under Article 26§2, victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage.[768] These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.[769]

In addition, the persons concerned must have a right to be reinstated in their post when they have been unfairly dismissed or pressured to resign for reasons linked to moral harassment.[770]

Opinion of the ECSR

As regards the situation in Denmark, the Committee notes the detailed information on the measures in place to promote awareness, disseminate information and prevent moral harassment, as well as to protect workers from such conduct. Furthermore, the Committee observes that Denmark ratified the ILO Violence and Harassment Convention, 2019 (No. 190) on 6 June 2024. The Convention is scheduled to enter into force for Denmark on 6 June 2025.

In view of these requirements, the Committee considers that Denmark is in a position to accept this provision, taking into account the measures which are already in place or being developed. The Committee considers that there appear to be no obstacles to the immediate acceptance of Article 26§2.

Article 27 – *The right of workers with family responsibilities to equal opportunities and equal treatment*

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1. to take appropriate measures:

a) to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;

b) to take account of their needs in terms of conditions of employment and social security;

c) to develop or promote services, public or private, in particular child day care services and other childcare arrangements;

[766] Conclusions 2014, Finland
[767] Conclusions 2007, Statement of Interpretation on Article 26§2
[768] Conclusions 2014, Azerbaijan
[769] Conclusions 2014, Azerbaijan
[770] Conclusions 2014, Azerbaijan

2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;

3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Situation in Denmark

The Government expressed reservations about this Article at the time of signing the revised Charter. The Government also indicated that this article is inspired by ILO Convention No. 156 of 1981, which Denmark has not ratified. The Government chose not to report separately on the three paragraphs of Article 27. The Government discussed this Article with the ECSR at the meeting held in Copenhagen in November 2023.

The Government provided the following information in its report:

Ministry of Employment

Denmark notes that each parent is entitled to 24 weeks' leave with state benefits following the birth of a child. If the parent is an employee, 13 of the 24 weeks may be transferred to the other parent.

Under the Act on Equal Treatment between Men and Women with regard to Employment (…), employees are entitled to return to the same or similar work after maternity, paternity or parental leave and to benefit from the same improvements in working conditions as they would have had if they had not been absent.

Denmark also notes that under the Act on Equal Treatment between Men and Women with regard to Employment (…), employers may not lawfully dismiss or treat an employee less favourably on grounds of pregnancy, maternity, paternity or parental leave. This is considered direct discrimination under both Danish and EU law.

For further information, the Government refers to its remarks concerning Article 8 of the Charter.

Ministry of Children and Education

In regard to day care services and other childcare arrangements (Article 27§1c of the Charter), the purpose of the Act on Early Childhood Education and Care (ECEC) is, among other things, to "provide families with flexibility and options regarding different types of ECEC facilities and subsidies, so that the family can plan family and working life according to their needs and wishes" (Act on ECEC, § 1).

Therefore, the Act on ECEC provides for the following elements of increased flexibility for parents:

- Access to request a specific ECEC facility,
- The option of choosing either a public or private ECEC facility,
- Access to choose an ECEC facility in another municipality,
- Municipalities can choose to subsidise parents who hire private childminding and minding services for their own children from 24 weeks,
- For parents with evening, weekend or night shifts: possibility to hire a private childminder as well as a part-time place in an ECEC facility,
- Opening hours must meet the local needs of parents who live locally.

The Danish Maritime Authority
The Danish Act on seafarers' employment conditions (…) stipulates that a seafarer shall be entitled to unpaid leave when compelling family responsibilities apply in the event of illness or accident, and where the seafarer's presence is urgently needed at home (force majeure). Whilst the Act does not contain any prohibition against termination due to family obligations, it does apply to absences due to pregnancy, maternity and adoption.

ECSR interpretation (DIGEST)

Article 27§1
Under Article 27§1a of the Charter, States Parties should provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment since these persons may face difficulties on the labour market due to their family responsibilities.[771]
Therefore, measures need to be taken by States Parties to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain, enter and re-enter the labour market, in particular by means of vocational guidance, training and re-training.[772]

However, when the quality of standard employment services available to everyone is adequate, there is no need to provide extra services for people with family responsibilities.[773]

The aim of Article 27§1b is to take into account the needs of workers with family responsibilities in terms of conditions of employment and social security.[774]

Measures need to be taken concerning the length and organisation of working time.[775] Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full-time employment.[2303] These measures should apply equally to men and women.[2304]

The type of measures to be taken cannot be defined unilaterally by the employer but should be provided by a binding text (legislation or collective agreement).[2305]

Periods of unemployment due to family responsibilities should be taken into account in the calculation of pension schemes or in the determination of pension rights.[776]

The aim of Article 27§1c is to develop or promote services, in particular child day care services and other childcare arrangements, that are available and accessible to workers with family responsibilities.[777] Preschool education should be free of charge and, if it is not, measures must be taken to make it financially accessible for vulnerable families.[2308]

Where a State has accepted Article 16, childcare arrangements are dealt with under that provision.[2309]

In any event, under Article 27§1 parents should be allowed to reduce or cease work because of the serious illness of a child.[778]

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[771] Conclusions 2005, Sweden
[772] Conclusions 2005, Estonia
[773] Conclusions 2003, Sweden
[774] Conclusions 2005, Statement of Interpretation on Article 27§1b; see e.g Conclusions 2005, Estonia
[775] Conclusions 2005, Statement of Interpretation on Article 27§1b; see e.g Conclusions 2005, Estonia 2303 Conclusions 2005, Statement of Interpretation on Article 27§1b; see e.g Conclusions 2005, Estonia 2304 Conclusions 2005, Lithuania 2305 Conclusions 2019, Belgium
[776] Conclusions 2003, Sweden
[777] Conclusions 2005, Statement of Interpretation on Article 27§1c; see e.g Conclusions 2005, Estonia 2308 Conclusions 2019, Armenia 2309 Conclusions 2003, Italy
[778] Conclusions 2003, Italy

Article 27§2

Article 27§2 provides for the right to parental leave which is distinct from maternity leave.[779] (Maternity leave is addressed under Article 8 of the Charter).

Article 27§2 requires States Parties to provide the possibility for either parent to obtain parental leave, as an important element for the reconciliation of professional, private and family life. The duration and conditions of parental leave should be determined by States Parties.[780]

Domestic law should entitle men and women to an individual right to parental leave on the grounds of the birth or adoption of a child.[781] With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided on a non-transferable basis to each parent.[782]

The States Parties are under a positive obligation to encourage the use of parental leave by either parent.[783]

Remuneration of parental leave plays a vital role in the take up of childcare leave, in particular for fathers or lone parents.[784] States Parties shall ensure that an employed parent is adequately compensated for their loss of earnings during the period of parental leave.[785] The modalities of compensation is within the margin of appreciation of the States Parties and may be either paid leave (continued payment of wages by the employer), a social security benefit, any alternative benefit from public funds or a combination of such compensations.[786] Regardless of the modalities of payment, the level must be adequate.[787]

Unpaid parental leave is not in conformity with Article 27§2.[788]

The Covid-19 crisis must not be allowed to eradicate or roll back progress made in relation to gender equality in the labour market, especially having regard to the fact that such gender equality was far from achieved prior to the onset of the crisis.[789] Indications are that women's employment has been placed at greater risk than men's by the pandemic.[790] Women workers are likely at a greater danger of infection as they make up the vast majority of exposed domestic, health and social care workers.[791] The need to reconcile family life with teleworking from home, home-schooling of children and childcare, combined with the stresses of potential Covid-19 health concerns, has led to serious pressures and challenges for many families, frequently with a disproportionate impact on women.[792] Faced with this situation, States Parties must take all necessary measures to apply and reinforce as appropriate Charter rights such as Article 27.[793]

Article 27§3

Family responsibilities must not constitute a valid ground for termination of employment. In this context, the notion of "family responsibilities" is to be understood as obligations in relation to dependent children as well as other members of the immediate family who need care and

[779] Conclusions 2011, Armenia
[780] Conclusions 2011, Armenia
[781] Conclusions 2011, Armenia
[782] Conclusions 2011, Armenia
[783] Conclusions 2015, Statement of interpretation on Article 27§2
[784] Conclusions 2011, Armenia
[785] Conclusions 2015, Statement of interpretation on Article 27§2
[786] Conclusions 2015, Statement of interpretation on Article 27§2
[787] Conclusions 2015, Statement of interpretation on Article 27§2
[788] Conclusions 2019, Ireland, Malta
[789] Statement on Covid-19 and social rights adopted on 24 March 2021
[790] Statement on Covid-19 and social rights adopted on 24 March 2021
[791] Statement on Covid-19 and social rights adopted on 24 March 2021
[792] Statement on Covid-19 and social rights adopted on 24 March 2021
[793] Statement on Covid-19 and social rights adopted on 24 March 2021

support (for instance elderly parents).[794] The purpose of Article 27§3 is to prevent these obligations from restricting preparation for and access to working life, exercise of an occupation and career advancement for works with family responsibilities.[795]

Workers dismissed on such illegal grounds must be afforded the same level of protection as that afforded in other cases of discriminatory dismissal under Article 1§2 of the Charter.[796] In particular, courts or other competent bodies should be able to order reinstatement of an employee unlawfully dismissed and/or to award a level of compensation that is sufficient both to deter the employer and proportionate the damage suffered by the victim.[797]

Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed.[798] If there is a ceiling on compensation for pecuniary damage, the victim must be able to seek unlimited compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.[799]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the measures in place to ensure the right of workers with family responsibilities to equal opportunities and equal treatment.

The Committee discussed all three paragraphs of this article at the meeting with the Government held in Copenhagen, in November 2023.

On the basis of the information provided in the written report and that received during the meeting with the Government, the Committee considers that Denmark is in a position to accept all three paragraphs of Article 27, taking into account a number of measures already in place. The Committee considers that there appear to be no obstacles to the immediate acceptance of Article 27§§1, 2 and 3.

Article 28 – *The right of workers' representatives to protection in the undertaking and facilities to be accorded to them*

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a) they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;

b) they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Situation in Denmark

[794] Conclusions 2003, Statement of Interpretation on Article 27§3; see e.g Conclusions 2003, Bulgaria
[795] Conclusions 2003, Statement of Interpretation on Article 27§3; see e.g Conclusions 2003, Bulgaria
[796] Conclusions 2007, Finland
[797] Conclusions 2007, Finland
[798] Conclusions 2011, Statement of Interpretation on Articles 8§2 and 27§3
[799] Conclusions 2011, Statement of Interpretation on Articles 8§2 and 27§3, see also *Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy, Complaint No.158/2017, decision on the merits of 11 September 2019, §96

In its report, the Government indicates that it had expressed reservations about this article when signing the revised Charter. As stated in the report, Article 28 is inspired by ILO Convention no. 135 (Workers' representatives) of 1971, which recognises the Danish contractual protection of trade union representatives in relation to the fulfilment of the Convention. It entered into force in Denmark on 6 June 1978. The Convention protects the workers' representatives against actions by the employer that may be detrimental to them, including dismissal. It also requires the employer to provide facilities to carry out their duties.

As the Government has highlighted, Article 28 of the Charter requires that workers' representatives should have the right to perform their duties, and be protected against dismissal for activities that are justified by their duties. The provision takes into account the labour market system of each country. However, legislation and collective agreements regarding workers' representatives do not cover all small undertakings in Denmark.

ECSR interpretation (DIGEST)

This provision guarantees the right of workers' representatives to protection in the undertaking and to certain facilities.[800] It complements Article 5, which recognises a similar right in respect of trade union representatives.[801]

Types of workers' representatives

According to the Appendix of Article 28, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.[802] States Parties may therefore recognise different kinds of workers' representatives other than trade union representatives.[803] However, Article 28 is not intended to impose an obligation to introduce any specific types of workers' representatives but to ensure that adequate forms of representation are available to all employees, both within and outside the scope of collective bargaining with the employer.[804] Representation may be exercised, for example, through workers' commissioners, workers' council or workers' representatives on the enterprise's supervisory board.[805]

Protection granted to workers' representatives

Protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against any other detrimental treatment.[806] Prejudicial acts may entail, for instance, denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing lay-offs or assigning retirement options, being subjected to shifts, cut-down or any other taunts or abuse.[807]

The rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical form.[808] To this end, the protection afforded to workers shall be extended for a reasonable period after the effective end of period of their office.[809]

[800] Conclusions 2003, Bulgaria
[801] Conclusions 2003, Bulgaria
[802] Conclusions 2003, Bulgaria
[803] Conclusions 2003, Bulgaria
[804] Conclusions 2018, Latvia
[805] Conclusions 2014, Austria
[806] Conclusions 2018, Russian Federation
[807] Conclusions 2018, Azerbaijan
[808] Conclusions 2010, Statement of Interpretation on Article 28*, citing* International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §59*
[809] Conclusions 2010, Statement of Interpretation on Article 28

Situations where the protection of worker's representatives against dismissal is limited for the period of performance of their functions, until their mandate expire, are not in conformity with Article 28 of the Charter.[810] Nor are situations where the protection afforded to workers' representatives lasts for three months after the end of their mandate.[811]

The Committee has found the situation to be in conformity with the requirements of Article 28 in countries where the protection is extended for one year after the end of mandate of workers' representatives[812] or where the protection granted to workers' representatives is extended for six months after the end of their mandate.[813] Remedies must be available to worker representatives who are dismissed unlawfully.[814]

Where discrimination takes place, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim.[815] The compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement.[816]
Facilities granted to workers' representatives

Protected workers must be granted the following facilities: paid time off to represent employees, financial contributions to work councils, the use of premises and materials for works councils, as well as other facilities mentioned in the R143 Recommendation concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971 (support in terms of benefits and other welfare benefits because of the time off to perform their functions; access for workers' representatives or other elected representatives to all premises, where necessary; the access without any delay to the undertaking's management board if necessary; the authorisation to regularly collect subscriptions in the undertaking; the authorization to post bills or notices in one or several places to be determined with the management board, the authorization to distribute information sheets, factsheets and other documents on general trade unions' activities).[817]

Moreover, the participation in training courses on economic, social and union issues should not result in a loss of pay.[818] Training costs should not be borne by the workers' representatives.[819]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the information provided in the report.

However, the Government has not submitted any information on the following points:

- whether adequate forms of representation and protection against dismissal are available to workers' representatives (other than trade union representatives) outside the scope of collective bargaining with the employer;
- whether the protection afforded to workers is extended for a reasonable period after the effective end of their term of office;

[810] Conclusions 2018, Armenia
[811] Conclusions 2018, Austria
[812] Conclusions 2018, Austria, citing Conclusions 2010, Estonia, and Conclusions 2010, Slovenia
[813] Conclusions 2018, Austria, citing Conclusions 2010, Bulgaria
[814] Conclusions 2010, Norway
[815] Conclusions 2010, Bulgaria
[816] Conclusions 2007, Bulgaria
[817] Conclusions 2010, Statement of Interpretation on Article 28
[818] Conclusions 2010, Statement of Interpretation on Article 28
[819] Conclusions 2010, Statement of Interpretation on Article 28

- what remedies are available to workers' representatives who are dismissed unlawfully;
- whether protected workers are granted the facilities mentioned in the R143 Recommendation concerning protection and facilities to be afforded to workers' representatives within the undertaking, adopted by the ILO General Conference of 23 June 1971.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider acceptance of Article 28.

Article 29 – *The right to information and consultation in collective redundancy procedures*

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Situation in Denmark

In its report, the Government indicates that this article is modelled on EC Directive No. 92/56 of 1992, which amended Directive No. 75/129 "on the approximation of the laws to collective redundancies". ILO convention No. 158 (termination of employment) has also been considered. It is important to note that Denmark has not yet ratified ILO convention No. 158 and had reservations about Article 29 of the revised Charter at the time of signing the Treaty.

According to the Government, Danish law on collective redundancy procedures implements the EU Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies.
The law concerns collective redundancies within a 30-day period of: 1) at least 10 employees within corporations of 20-99 employees, 2) at least 10 per cent of employees within corporations of between 100-299 employees, 3) at least 30 employees within corporations of at least 300 employees. If the redundancy affects at least 50 per cent of at least 100 employees, more stringent rules come into effect concerning the notice period, the earliest effective date of the redundancies and the amount of compensation for non-compliance with the rules on negotiations and notice.

The employer must negotiate with the workers or their representatives, if representatives have been chosen or appointed. The selection of said representatives is not regulated further.
The employer must enter into negotiations with the workers or their representatives as early as possible with a view to avoiding or reducing the redundancies and mitigating their consequences through measures aimed at redeploying or retraining the workers concerned.

After the negotiations, the employer shall notify the Regional Labour Market Council (RAR - *Regionale Arbejdsmarkedsråd*) of the redundancies. A copy of the notifications will be provided to the workers or their representatives.
Regional Labour Market Councils (RAR) are made up of representatives of social partner organisations. Employers are required to notify the RAR of any collective redundancies. The RAR can decide when a company with more than one local workplace is regarded as one or more workplaces in regard to the law.

The law provides for both civil and criminal sanctions if an employer fails to comply with the rules on information, notification and negotiation.

ECSR interpretation (DIGEST)

Under Article 29, workers' representatives have the right to be informed and consulted in good time by employers planning to make collective redundancies.[820]

Redundancies concerned

Under Article 29 the collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity.[821]

The definition of collective redundancies in domestic law must not be too restrictive.[822]

A situation where collective redundancies are such where the number of employees to be made redundant within 30 days is at least five in undertakings employing between 20 and 50 persons; at least 10 in undertakings employing between 50 and 100 persons; at least 10% of employees in undertakings employing between 100 and 300 persons; or at least 30 employees in undertakings employing 300 or more persons is compatible with the Charter.[823]

Notion of workers' representatives

The appendix to the Charter defines workers' representatives as persons who are recognised as such under national legislation or practice, in accordance with ILO Convention No. 135 on workers' representatives.[824]

When employers implement information and consultation procedures preceding collective redundancies, employees should be represented by persons acting on behalf of all workers employed in the workplace.[825] Such representatives may be either bodies operating in the employer's enterprise (for example, trade unions or workers' councils) or ad hoc representatives appointed to take part in this process.[826]

National law should ensure that employees may appoint representatives even when they are not otherwise represented in the context of a particular workplace by a trade union or other representative body.[827] Such representatives should represent all employees who may be potentially subject to collective redundancies and should not suffer any negative consequences as a consequence of their activities in this regard.[828]

Consultation procedure

Prior information and consultation

Under Article 29, consultation procedures must take place in good time prior to collective redundancies.[829] National law should thus ensure that employers are obliged to provide employees with information about planned collective redundancies sufficiently far in advance of the process, so as to enable employees and their representatives to become familiar with

[820] Conclusions 2003, Statement of Interpretation on Article 29
[821] Conclusions 2003, Statement of Interpretation on Article 29; Conclusions 2018, Latvia
[822] Conclusions 2014, Azerbaijan
[823] Conclusions 2014, Azerbaijan
[824] Explanatory Report to the European Social Charter (Revised) – European Treaty Series – No. 163; see also Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163
[825] Conclusions 2014, Statement of Interpretation on Article 29
[826] Conclusions 2014, Statement of Interpretation on Article 29
[827] Conclusions 2014, Statement of Interpretation on Article 29
[828] Conclusions 2014, Statement of Interpretation on Article 29
[829] Conclusions 2014, Statement of Interpretation on Article 29

the key aspects of the planned redundancies.[830] National law should also guarantee the right of employees' representatives to be provided with all relevant information throughout the entire duration of the consultation process.[831]

Consultation should be conducted within a time period that is sufficient to ensure that employees' representatives have an opportunity to present suitable proposals with a view to avoiding, limiting or mitigating the effect of the proposed redundancies.[832]

Employers should be required to provide employees' representatives with all the relevant information necessary to ensure the integrity and effectiveness of the information and consultation process.[833] This information should in particular include the reasons for the proposed redundancies, the criteria for determining which employees are to be made redundant, the proposed order and scheduling of such redundancies, the amount of any cash benefits or other forms of compensation and the scope and content of any planned social measures which are designed to mitigate the consequences of this process.[834]

Purpose of the consultation

Article 29 requires that States Parties establish an information and consultation procedure which should precede the process of collective redundancies. The provisions of Article 29 are directed – on the one hand – towards ensuring that workers are made aware of reasons and scale of planned redundancies, and – on the other hand – towards ensuring that the position of workers is taken into account when their employer is planning collective redundancies, in particular as regards the scope, mode and manner of such redundancies and the extent to which their consequences can be avoided, limited and/or mitigated.[835]

Article 29 provides for the employer's duty to consult with workers' representatives and the purpose of such consultation. This obligation is not just an obligation to inform unilaterally, but implies that a process will be set in motion, i.e. that there will be sufficient dialogue between the employer and the workers' representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, although it is not necessary that agreement be reached.[836] The failure of the employer to carry out their information and consultation obligations amounts to a violation of Article 29.[837]

Simple notification of redundancies to workers or their representatives is not sufficient.[838]

The consultation procedure must cover the redundancies themselves, including the ways and means of avoiding them or limiting their occurrence; and support measures, such as social measures to facilitate the redeployment or retraining of the workers concerned and the redundancy package.[839]

As part of this process, employers should be required to cooperate with administrative authorities or public agencies which are responsible for the policy counteracting unemployment, by for example notifying them about planned collective redundancies and/or

[830] Conclusions 2014, Statement of Interpretation on Article 29
[831] Conclusions 2014, Statement of Interpretation on Article 29
[832] Conclusions 2014, Statement of Interpretation on Article 29
[833] Conclusions 2014, Statement of Interpretation on Article 29
[834] Conclusions 2014, Statement of Interpretation on Article 29
[835] Conclusions 2014, Statement of Interpretation on Article 29
[836] Conclusions 2003, Sweden; Conclusions 2003, Statement of Interpretation on Article 29
[837] Conclusions 2014, Georgia
[838] Conclusions 2014, Georgia
[839] Conclusions 2014, Georgia

cooperating with them in relation to retraining employees who are made redundant, or by providing them with other forms of assistance with a view to obtaining a new job.[840]

Preventive measures and sanctions

Consultation rights must be accompanied by guarantees that they can be exercised in practice.[841] Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met.[842]

Provision must be made for sanctions after the event, and these must be effective, i.e. a sufficient deterrent for employers.[843] The right of individual employees to contest the lawfulness of their dismissal is examined under Article 24 of the Charter.[844]

Opinion of the ECSR

As regards the situation in Denmark, the Committee notes that there are measures in place to ensure the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies.

In view of these requirements, the Committee considers that Denmark is in a position to accept this provision, taking into account the measures in place. The Committee considers that there seem to be no obstacles to the immediate acceptance of Article 29.

Article 30 – *The right to protection against poverty and social exclusion*

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a) to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b) to review these measures with a view to their adaptation if necessary.

Situation in Denmark

As outlined in the Government's report, Denmark has comprehensive welfare provisions for all individuals with legal residence status. These provisions cover a broad range of policy areas, such as health, employment, social services, among others. Some of the services and benefits are universal, while others are tailored to meet the specific needs of vulnerable groups. Most welfare services fall under the responsibility of the municipalities.

The Act on Social Services stipulates that municipalities must provide a vast array of services, support and benefits to persons socially marginalised or people at risk of such marginalisation.

As noted in the report, these persons often encounter multiple problems affecting both their personal and social lives. The municipal council will therefore consider applications and requests for assistance, with due regard to all available options for support under social

[840] Conclusions 2014, Statement of Interpretation on Article 29
[841] Conclusions 2014, Georgia
[842] Conclusions 2003 and 2007, Sweden
[843] Conclusions 2003, Sweden
[844] Conclusions 2003 Statement of Interpretation on Article 29

legislation, including counselling and guidance. In addition, the municipal council will assess the feasibility of assistance from other authorities.

Access to education

The Danish Act on Early Childhood Education and Care (ECEC) states that one of the aims of the Act is to prevent negative social intergenerational transmission and social exclusion by making ECEC both an integral part of the municipality's overall general provision for children and the municipality's preventive and support measures for children in need of special measures.

The Act on Day Care Facilities provides a guarantee for equal access to an ECEC facility for all children below school age. Guaranteed ECEC availability means that the local council must offer places in an age-appropriate ECEC facility to all children from the age of 26 weeks until they reach school age. The Act stipulates that, as a starting point, the municipality will provide subsidies for a minimum of 75% of the budgeted gross operating expenditure for a child in an ECEC facility, while parents will pay a maximum of 25 % of the services for their children. Families receive a discount for siblings. Additionally, parents can apply for a financially supported place subsidy, which is calculated on the basis of their financial situation. This subsidy is increased for single-parent families.

The aim of the regulations is to ensure that all children, regardless of their socio-economic background, have equal access to ECEC.

ECSR case law (DIGEST)

Living in a situation of poverty and social exclusion violates the dignity of human beings.[845]

Personal scope

States Parties are not obliged to apply to migrants in an irregular situation the range of economic, social and cultural measures that are to be taken in order to secure the right to protection against poverty and social exclusion.[846] The co-ordinated approach required by Article 30 involves the adoption of positive measures, most of which cannot be regarded as being applicable to groups not covered by the personal scope of the Charter. Article 30 is thus not applicable with regard to migrants in an irregular situation.[847] Nor does it apply to unlawfully present foreign minors.[848]

An overall and coordinated approach

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt an overall and coordinated approach, which shall consist of an analytical framework,[849] a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights, in particular employment, housing, training, education, culture and social and medical assistance.[850]

[845] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[846] European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, para. 211, citing DCI v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 145-147
[847] European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, para. 211, citing DCI v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 145-147
[848] Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §145
[849] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[850] Conclusions 2013, Statement of interpretation on Article 30

It must link and integrate public policies in a consistent way, embedding the fight against poverty and social exclusion in all strands of policy and moving beyond a purely sectoral or target group approach.[851] Effective coordination mechanisms should exist at all levels, including at the level of delivery of assistance and services to the end users.[852] Adequate resources must be made available for the implementation of the measures taken in the context of the overall and coordinated approach under Article 30.[853] In many instances, a significant and enduring expansionary fiscal policy effort by the States Parties will be necessary to prevent an increase in poverty and social exclusion.[854]
Adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty, and should consequently be allocated to attain the objectives of the strategy.[855] The measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned.[856] As long as poverty and social exclusion persist they should also represent an increase in the resources deployed to realise social rights.[857]

i. Measures to prevent and remove obstacles to access fundamental social rights

The measures should strengthen access to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions.[858]

ii. monitoring mechanisms involving all relevant actors

States Parties must also adopt monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion.[859]

Further, States' failure to collect reliable data and statistics in respect of groups generally acknowledged to be socially excluded or disadvantaged, including highly dependent adults with disabilities deprived of access to care and accommodation centres, prevents an "overall and co-ordinated approach" to the social protection of these persons and constitutes an obstacle to the development of targeted policies concerning them.[860]

Assessing the effectiveness of policies
When assessing compliance with the Charter, definitions of poverty and social exclusion and measuring methodologies applied at the national level and the main data made available are systematically reviewed.[861] The Committee also takes into account a set of indicators in order to assess in a more precise way the effectiveness of policies, measures and actions undertaken by States Parties within the framework of this overall and co-ordinated approach.[862] In doing so, it has made clear that its consideration of state practice in terms of

[851] Statement on Covid-19 and social rights adopted on 24 March 2021
[852] Statement on Covid-19 and social rights adopted on 24 March 2021
[853] Statement on Covid-19 and social rights adopted on 24 March 2021
[854] Statement on Covid-19 and social rights adopted on 24 March 2021
[855] Conclusions 2005, Slovenia
[856] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[857] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[858] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[859] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[860] International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 75/2011, decision of 18 March 2013, §§ 193, 197
[861] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[862] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France; Conclusions 2013, Statement of interpretation on Article 30

Article 30 reflects an understanding of both income and multi-dimensional understandings of poverty.[863]

i. Resources

One of the key indicators in this respect is the level of resources (including any increase in this level) that have been allocated to attain the objectives of the strategy,[864] in so far as "adequate resources are an essential element to enable people to become self-sufficient".[865]

ii. Relative poverty rate

In addition, the main indicator used to measure poverty is the relative poverty rate (this corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income).[866]

iii. At-risk-of-poverty-rate

Furthermore, the at-risk-of-poverty rate before and after social transfers (Eurostat) is also used as a comparative value to assess national situations.

These resource-related and income-based indicators are employed without prejudice to the use of other suitable parameters that are taken into account by national anti-poverty strategies or plans (e.g. indicators relating to the fight against the 'feminization' of poverty, the multidimensional phenomena of poverty and social exclusion, the extent of 'inherited' poverty, etc.).[867]
The absence of decisive progress in combating poverty and social exclusion in a context of economic growth is a ground for non-conformity under Article 30.[868]

Poverty and social exclusion in times of crisis
Concerning the repercussions of the economic crisis on social rights, the Committee held that, by acceding to the Charter, the Parties have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised.[869] Accordingly, it has concluded that "the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most".[870]

The human rights approach of poverty has been reaffirmed by the Guiding Principles on extreme poverty and human rights (submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona and adopted by the United Nations Human Rights Council on 27 September 2012) and which the Committee takes into consideration.[871]

Social exclusion
In particular, the Committee has interpreted the scope of Article 30 as relating both to protection against poverty (understood as involving situations of social precarity) and

[863] See, e.g., the Committee description of 'the multidimensional poverty and exclusion phenomena' in its Conclusions 2005, Norway and Conclusions 2007, Belgium
[864] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[865] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[866] Conclusions 2013, Statement of interpretation on Article 30
[867] Conclusions 2013, Statement of interpretation on Article 30
[868] See, e.g., Conclusions 2017, Ireland
[869] General Introduction to Conclusions XIX-2 (2009)
[870] General Introduction to Conclusions XIX-2 (2009)
[871] Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2013, §81; Conclusions 2013, Statement of interpretation on Article 30

protection against social exclusion (understood as involving obstacles to inclusion and citizen participation), in an autonomous manner or in combination with other connecting provisions of the Charter.[872]

Concerning social exclusion, States have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of minorities in the general culture, media or the different levels of government, so that these groups perceive that there are real incentives or opportunities for engagement to counter the lack of representation.[873]

Further, the reference to the social rights enshrined in Article 30 should not be understood too narrowly. In fact, the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes on a special importance.[874] In this regard, the right to vote, as with other rights relating to civic and citizen participation, constitutes a necessary dimension in social integration and inclusion and is thus covered by Article 30.[875] Therefore, States must also facilitate access to identification documents that are fundamental to obtaining residency and citizenship in order to exercise civil and political participation.[876]

These two dimensions of Article 30, poverty and social exclusion, constitute an expression of the principle of indivisibility which is also contained in other provisions of the Charter (for example, enjoyment of social assistance without suffering from a diminution of political or social rights, Article 13).[877]

The relationship between Article 30 and other Charter rights

The Committee has emphasized the very close link between the effectiveness of the right recognized by Article 30 of the Charter and the enjoyment of the rights recognized by other provisions, such as the right to work (Article 1), access to health care (Article 11), social security allowances (Article 12), social and medical assistance (Article 13), the benefit from social welfare services (Article 14), the rights of persons with disabilities (Article 15), the social, legal and economic protection of the family (Article 16) as well as of children and young persons (Article 17), right to equal opportunities and equal treatment in employment and occupation without sex discrimination (Article 20), the rights of the elderly (Article 23) or the right to housing (Article 31), without forgetting the important impact of the non-discrimination clause (Article E), which obviously includes non-discrimination on grounds of poverty.[878]

Consequently, together with the indicators mentioned above, when assessing state compliance with Article 30, the Committee also takes into consideration the national measures or practices which fall within the scope of other substantive provisions of the Charter in the framework of both monitoring systems (the reporting procedure and the collective complaint procedure).[879] This approach does not mean that a conclusion of non-conformity or a decision of violation of one or several of these provisions automatically or necessarily lead to a violation of Article 30; but such a conclusion or decision may, depending on the circumstances, be relevant in assessing conformity with Article 30.[880]

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[872] Conclusions 2013, Statement of interpretation on Article 30
[873] Conclusions 2013, Statement of interpretation on Article 30 citing Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §107
[874] Conclusions 2013, Statement of interpretation on Article 30
[875] Conclusions 2013, Statement of interpretation on Article 30 citing European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §99
[876] Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 103 and 108
[877] Conclusions 2013, Statement of interpretation on Article 30
[878] Conclusions 2013, Statement of interpretation on Article 30
[879] Conclusions 2013, Statement of interpretation on Article 30
[880] Conclusions 2013, Statement of interpretation on Article 30, citing EUROCEF v. France, Complaint No. 82/2012, decision on the merits of 19 March 2013, §59

Opinion of the ECSR

The Committee takes note of the information provided in the report. The Committee discussed this Article with the Government at the meeting held in Copenhagen in November 2023.

In the Committee's view, this is a rare provision that does not call for legislation in a specific sector, but rather the formulation of a general policy by the State aimed at achieving a social objective. The Government must have a strategy to reduce poverty and social exclusion. It must develop and implement a wide range of measures and use a coordinated approach to promote effective access to certain social issues, including living conditions, employment, housing, social assistance, health, etc. The efficacy of the approach must be regularly reviewed and adapted or changed as necessary.

The Committee requires reliable statistics and relevant information to assess the situation under this Article and recalls that the Government already provides similar information to Eurostat.

The Committee has not been provided with sufficient information on the following points:

- details on the analytical framework, priorities and related measures to prevent and remove obstacles to access to social rights;
- the specific efforts made to measure and combat poverty and social exclusion, as well as the statistics available in this regard;
- how the Government coordinates efforts across policy areas in order to achieve the "overall and coordinated approach" required under Article 30 of the revised Charter, thereby addressing the multidimensional nature of poverty and social exclusion;
- whether civil society and persons affected by poverty and social exclusion are involved in the monitoring mechanisms;
- whether minorities are encouraged to participate in society and whether they are represented in the general culture, media or the different levels of government;
- what definitions of poverty and social exclusion are used and what measurement methods and data are applied at national level.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to continue its efforts and to consider acceptance of Article 30 of the Charter.

Article 31 – *The right to housing*

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;

2. to prevent and reduce homelessness with a view to its gradual elimination;

3. to make the price of housing accessible to those without adequate resources.

Situation in Denmark

The Government's report indicates that Denmark has a welfare system which aims to ensure that all citizens have access to housing of an adequate standard. The Government chose not to report separately on the three paragraphs of Article 31. This article was also discussed with the Committee at the meeting held in Copenhagen, in November 2023.

The Government provided the following information in its report:

Promotion of access to housing of an adequate standard

According to the Government, Denmark has carried out various initiatives and policies to promote access to decent housing. Building regulations and standards have been introduced to ensure that housing meets certain quality standards. Additionally, the government has implemented diverse housing policies to facilitate access to housing for vulnerable groups such as young people, older persons, and low-income families.

Prevention and reduction of homelessness

The Government underlines that Denmark has a proactive approach in addressing homelessness with the long-term objective of eliminating it.

Making housing prices affordable for those lacking adequate resources

A range of housing subsidy programmes and social benefits are available to individuals lacking adequate resources.

It is noteworthy that Denmark is continuously enhancing housing sector conditions and addressing challenges such as housing shortages and rising prices, as outlined in the report.

All individuals who are lawfully staying in Denmark are entitled to assistance under the Act on Social Services (*Lov om social service*). The aforementioned Act requires that municipalities provide support to individuals facing homelessness or are at risk of becoming homeless, or unable to live in their own homes, and to offer them a range of services, including temporary accommodation such as repatriation centres and shelters.

In 2021, a new political agreement on combatting homelessness was agreed upon. Its aim is to significantly reduce the number of rough sleepers and put an end to long-term homelessness, with an increased focus on the Housing First[881] method. To achieve this objective, the government will provide more affordable homes and strengthen the economic incentives for local authorities to house homeless people in permanent housing. It will also use evidence-based support methods in line with the Housing First approach.

Following the agreement, the Danish parliament passed a bill on the reorganisation of efforts against homelessness in May 2023.

The bill gives individuals who are in homelessness and at risk of becoming homeless the right to housing support, using evidence-based methods in line with the Housing First approach. The State shall reimburse 50% of the costs incurred by local authorities in providing housing support for 2 years following a stay in temporary and emergency accommodation. The bill allows local authorities to discharge a citizen from a shelter to a permanent home, provided that he/she receives adequate housing, social support and an action plan.

ECSR interpretation (DIGEST)

Article 31§1

Under Article 31§1 of the Charter, States Parties shall guarantee to everyone the right to housing and shall promote access to adequate housing.[882] States must take the legal and practical measures which are necessary and adequate for the effective protection of the right

[881] https://housingfirsteurope.eu/country/denmark/

[882] European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011, decision on the merits of 24 January 2012, §95

in question.[883] States enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources.[884]

States Parties must guarantee to everyone the right to adequate housing.[885] They should promote access to housing in particular to different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems.[886]

Adequate housing

The notion of adequate housing must be defined in law. "Adequate housing" means:

1. a dwelling which is safe from a sanitary and health point of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc and where specific dangers such as the presence of lead or asbestos are under control;[887]
2. a dwelling which is not over-crowded, that the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence;[888]
3. a dwelling with secure tenure supported by the law. This issue is covered by Article 31§2.[889]

The definition of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock.[890] It must also be applied to housing available for rent as well as to housing owner occupied housing.[891]

Positive measures in the field of housing must be adopted in respect of vulnerable persons, paying particular attention to the situation of Roma and Travellers. As a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority.[892] They, therefore, require special protection.[893] Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases.[894]

The failure to provide a sufficient number of halting sites for Travellers as well as the poor living conditions and operational failures on such sites have led to findings of non-conformity under this provision.[895]

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[883] European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011, decision on the merits of 24 January 2012, §95
[884] European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011, decision on the merits of 24 January 2012, §95
[885] Conclusions 2003, France
[886] Conclusions 2003, Italy
[887] Conclusions 2003, France
[888] Conclusions 2003, France
[889] Conclusions 2003, France
[890] Conclusions 2003, France
[891] Conclusions 2003, France
[892] Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40
[893] Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40
[894] Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40
[895] European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §§ 38, 39, 49; Conclusions 2019, France

Likewise, housing policies which have resulted in the spatial and social segregation of Roma (poorly built housing, on the outskirts of towns, segregated from the rest of the population), have also led to breaches of the Charter.[896]

The fact that some refugee and asylum-seeking unaccompanied children may remain for lengthy periods of time in temporary accommodation facilities (emergency hotels and Safe zones) does not satisfy the requirements of long-term accommodation suited to their specific circumstances, needs and extreme vulnerability and violates Article 31§1.[897] These facilities do not offer the quality standards necessary for the long-term accommodation of unaccompanied children.[898]

Effectiveness

It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords.[899] States Parties are expected to demonstrate how the adequacy of the existing housing stock (whether rented or not, privately or publicly owned) is checked, whether regular inspections are carried out and what follow-up is given to decisions finding that a dwelling does not comply with the relevant regulation.[900] Public authorities must also limit against the interruption of essential services such as water, electricity and telephone.[901]

Even if under domestic law, local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, States Parties to the Charter are responsible, in terms of their international obligations to ensure that such responsibilities are properly exercised.[902] Thus, ultimate responsibility for policy implementation, involving at a minimum supervision and regulation of local action, lies with the Government which must be able to show that both local authorities and itself have taken practical steps to ensure that local action is effective.[903]

Legal protection

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial judicial or other remedies.[904] Any appeal procedure must be effective.[905]

Article 31§2

[896] European Roma Rights Center (ERRC) v. Portugal, Complaint No. 61/2010, decision on the merits of 30 June 2011, §48
[897] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §145
[898] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §145
[899] Conclusions 2003, France
[900] Conclusions 2019, Turkey, Ukraine
[901] Conclusions 2003, France
[902] European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §26, citing European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §29
[903] European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §26; European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §79
[904] Conclusions 2003, France
[905] Conclusions 2015, Austria, Article 16

Definition

Homeless persons are those persons who legally do not have at their disposal a dwelling or other form of adequate housing in the terms of Article 31§1.[906]

Article 31§2 obliges States Parties to gradually reduce homelessness with a view to its elimination.[907] Reducing homelessness implies the introduction of measures such as provision of immediate shelter and care for the homeless and measures to help such people overcome their difficulties and prevent a return to homelessness.[908]

Preventing homelessness

States Parties must take action to prevent categories of vulnerable people from becoming homeless. This requires States Parties to introduce a housing policy for all disadvantaged groups of people to ensure access to social housing and housing allowances. (cf. Article 31§3).[909]

Though State authorities enjoy a wide margin of discretion in measures to be taken concerning town planning, they must strike a balance between the general interest and the fundamental rights of the individuals, in particular the right to housing and its corollary of ensuring individuals do not become homeless.[910]

Protection from evictions

Forced eviction can be understood to cover situations involving deprivation of housing which a person occupied due to insolvency or wrongful occupation.[911]

States Parties must set up procedural safeguards to limit the risk of eviction.[912]

Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants.[913] However, the criteria of illegal occupation must not be unduly wide, and evictions should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules.[914]

Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties affected in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction.[915] A notice period of one month in case of eviction due to insolvency or wrongful occupation is not reasonable.[916]

When evictions do take place, they must be carried out under conditions that respect the dignity of the persons concerned.[917] The law must prohibit evictions carried out at night or

[906] Conclusions 2003, Italy; Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014, §135
[907] Conclusions 2003, Sweden
[908] Conclusions 2003, Sweden
[909] Conclusions 2003, Sweden; Conclusions 2005, Lithuania; Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014, §136
[910] Conclusions 2007, Italy
[911] Conclusions 2003, Sweden; Conclusions 2019, Ukraine
[912] Conclusions 2005, Lithuania
[913] European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §51
[914] European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §51
[915] Conclusions 2003, Sweden
[916] Conclusions 2019, Ukraine
[917] Conclusions 2003, Sweden

during the winter period.[918] When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.[919]

Domestic law must provide legal remedies and offer legal aid to those who are in need of seeking redress from the courts. Compensation for illegal evictions must also be provided.[920]

Right to shelter

According to Article 31§2, homeless persons must be offered shelter as an emergency solution.[921] To ensure that the dignity of the persons sheltered is respected, shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to clean water and heating and sufficient lighting.[922] Another basic requirement is the security of the immediate surroundings.[923] Nevertheless, temporary housing need not be subject to the same requirements of privacy, family life and suitability as are required from more permanent forms of standard housing, once the minimum requirements are met.[924]

States Parties shall foresee sufficient places in emergency shelters[925] and the conditions in the shelters should be such as to enable living in keeping with human dignity.[926]

The temporary supply of shelter, however adequate, cannot be considered satisfactory.[927] Individuals who are homeless should be provided with adequate housing within a reasonable period.[928] In addition, measures should be taken to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness.[929]

The right to shelter should be adequately guaranteed for migrants, including unaccompanied migrant children, and asylum-seekers.[930] States Parties are required to provide adequate shelter to children unlawfully present in their territory for as long as they are within their jurisdiction.[931] As the scope of Articles 31§2 and 17 overlap to a large extent, the Committee assesses the issue of the right to a shelter of unaccompanied foreign minors under the scope of Article 31§2 when States Parties have accepted both provisions.[932] The housing of people in reception camps and temporary shelters which do not satisfy the standards of human dignity is in violation of the aforementioned requirements.[933] States should develop detailed

[918] Conclusions 2003, Sweden
[919] Conclusions 2003, Sweden
[920] Conclusions 2003, Sweden
[921] Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §46
[922] Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §62
[923] Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §62
[924] Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §62
[925] European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §107
[926] European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 108-109
[927] European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §106
[928] European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §106
[929] Conclusions 2003, Italy
[930] Conclusions 2019, Greece
[931] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §117
[932] European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §173
[933] Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §62

guidelines on standards of reception facilities, assuring adequate space and privacy for children and their families.[934]

The exceptional nature of the situation resulting from an increasing influx of migrants and refugees and the difficulties for a State in managing the situation at its borders cannot absolve that State of its obligations under Article 31§2 of the Charter to provide shelter to migrant and refugee children, in view of their specific needs and extreme vulnerability, or otherwise limit or dilute its responsibility under the Charter.[935]

The Committee considers that eviction from shelters without the provision of alternative accommodation must be prohibited.[936]

Eviction from shelter of persons irregularly present within the territory of a State Party should be prohibited as it would place the persons concerned, particularly children, in a situation of extreme helplessness, which is contrary to the respect for their human dignity.[937]

States Parties are not obliged to provide alternative accommodation in the form of permanent housing within the meaning of Article 31§1 for migrants in an irregular situation.[938]

Article 31§3

An adequate supply of affordable housing must be ensured for persons with limited resources.[939]

Social housing

Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located.[940] In order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show that the affordability ratio of the poorest applicants for housing is compatible with their level of income.[941]

States Parties must:

- adopt appropriate measures for the provision of housing, in particular social housing.[942] Social housing should target, in particular, the most disadvantaged;[943]
- adopt measures to ensure that waiting periods for the allocation of housing are not excessive;[944] judicial or other remedies must be available when waiting periods are excessive;[945]

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[934] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §121
[935] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §133
[936] Conclusions 2015, Statement of Interpretation on Article 31§2
[937] European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §110
[938] European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §60
[939] Conclusions 2003, Sweden
[940] Conclusions 2003, Sweden
[941] FEANTSA v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, §72.
[942] Conclusions 2003, Sweden
[943] International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 98-100
[944] International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §131
[945] International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §131

All the rights thus provided must be guaranteed without discrimination, in particular as in respect of Roma or Travellers wishing to live in mobile homes.[946]

Housing benefits

Under Article 31§3, States Parties are required to adopt comprehensive housing benefit systems to protect low-income and disadvantaged sections of the population.[947] Housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.[948]

The right to affordable housing must not be subject to any kind of discrimination on any grounds mentioned by Article E of the Charter.[949]

Opinion of the ECSR

As regards the situation in Denmark, the Committee takes note of the measures in place to ensure the effective exercise of the right to housing.

However, the Government has not submitted any information on the following points:

Article 31§1

- whether the notion of 'adequate housing' is defined in law;
- how the adequacy of the existing housing stock is checked, whether regular inspections are carried out and what follow-up is given to decisions finding that a dwelling does not comply with the relevant regulation;
- measures taken to promote access to housing for different groups of vulnerable persons, including Roma and Travellers, refugees and asylum-seekers, especially unaccompanied children;
- whether there is access to affordable and impartial judicial or other remedies.

Article 31§2

- measures taken to limit the risk of eviction and to protect against forced eviction;
- whether there are sufficient places in emergency shelters and the conditions in such shelters;
- whether adequate accommodation is provided to children unlawfully present in the territory for as long as they are within the jurisdiction.

Article 31§3

- whether the affordability ratio of housing for the poorest applicants is compatible with their income level;
- whether measures are in place to ensure that waiting periods for the allocation of housing are not excessive and that judicial or other remedies are available where waiting periods are excessive.

[946] International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 149155; Conclusions 2019, France
[947] Conclusions 2003, Sweden; Conclusions 2019, Greece
[948] Conclusions 2003, Sweden
[949] Conclusions 2019, Turkey

- what legal remedies are available in the event of rejection of an application for housing benefit.

In the light of the above, the Committee considers that further information is needed to assess whether the situation in law and practice meets the standards of the Charter. It encourages the Government to continue its efforts and to consider acceptance of Article 31 §1, 2 and 3 of the Charter.

APENDIX I

PROGRAMME

The European Social Charter in Denmark

organised by
the Department of Social Rights, DG I Council of Europe
and
Ministry of Employment of Denmark
09-10 November 2023

1. **The 1st Meeting on the non-accepted provisions of the European Social Charter**
2. **Meeting with the Ministry of Foreign Affairs**
3. **Meeting with the Danish Parliamentary delegation to PACE**
4. **Meeting with the social partners**
5. **Meeting with the Danish Institute for Human Rights**
6. **Meeting with civil society organisations**

This programme is organised within the framework of the procedure provided for by Article 22 of the 1961 Charter on “non-accepted provisions”. It will consist of an exchange of views and information on the provisions not accepted by Denmark with a view to evaluating the prospects for acceptance of the revised Charter and additional provisions. In addition, there will be an exchange of views on the system of collective complaints, which has not yet been accepted by Denmark.

DAY 1: 9 November 2023

Venue: Ministry of Employment
Holmens Kanal 20 | 1060 Copenhagen
Working languages: English

Moderator: Kirstine Wichmand, Legal Advisor, Ministry of Employment

8.45 Arrival of the ECSR/ CoE Delegation at the Ministry of Employment

9.00 – 9.10 Opening of the meeting

- *Ms. Vibe Westh, Deputy Permanent Secretary, Ministry of Employment*
- *Mr. Henrik Kristensen, Deputy Executive Secretary, European Committee of Social Rights*

9.10 – 9.20 Denmark and the European Social Charter

- *Mr. Henrik Kristensen, Deputy Executive Secretary, European Committee of Social Rights*

9.20 –10.10 ***The Charter system***
Criteria for the ratification of the revised Charter
Charter system reform, the reporting procedure, the procedure under Article 22 (non-accepted provisions) of the European Social Charter of 1961 (ETS No. 35).

- *Mr. Giuseppe Palmisano, former President of the European Committee of Social Rights*
- *Ms. Loreta Vioiu, Programme Manager, Department of Social Rights*
- *Mr. Henrik Kristensen, Deputy Executive Secretary of the European Committee of Social Rights, Department of Social Rights*

Questions and answers

10.10 –10.45 Article 2 The right to just conditions of work
§§1, 3, 4, 6 and 7

Situation in law and in practice in Denmark. Prospects for acceptance.

- *Ministry of Employment, The Danish Maritime Authority, The Danish Agency for Labour Market and Recruitment, Danish Working Environment Authority (WEA)*

Comments in the light of the Committee's conclusions and decisions

- *Karin Møhl LARSEN, member of the European Committee of Social Rights*

Discussion

10.45 –11.00 Coffee break

11.00 –11.35 Article 7 The right of children and young persons to protection
§§ 1 to 10

Situation in law and in practice in Denmark. Prospects for acceptance.

- *Danish Working Environment Authority (WEA), The Danish Agency for Labour Market and Recruitment, Ministry of Children and Education*

Comments in the light of the Committee's conclusions and decisions

- *Miriam Kullmann, European Committee of Social Rights*

Discussion

11.35 –12.05 Article 8 The right of employed women to protection and maternity
§§ 2-5

Situation in law and in practice in Denmark. Prospects for acceptance.

- *Ministry of Employment, Danish Working Environment Authority (WEA), Danish Maritime Authority*

Comments in the light of the Committee's conclusions and decisions

- *Karin Møhl LARSEN, member of the European Committee of Social Rights*

Discussion

12.05 –12.30 Article 26 The right to dignity at work
§§ 1 and 2

Situation in law and in practice in Denmark. Prospects for acceptance.

- *Ministry of Employment and Danish Working Environment Authority (WEA)*

Comments in the light of the Committee's conclusions and decisions

- *Giuseppe Palmisano, former President of the European Committee of Social Rights*

Discussion

12.30 – 13.30 Lunch

13.30–14.05 Article 27 The right of workers with family responsibilities to equal opportunities and equal treatment
§§ 1 to 3

Situation in law and in practice in Denmark. Prospects for acceptance.

- *Ministry of Employment, Ministry of Children and Education, Danish Maritime Authority*

Comments in the light of the Committee's conclusions and decisions

- *Miriam Kullmann, member of the European Committee of Social Rights*

Discussion

14.05- 14.35 Article 30 The right to protection against poverty and social exclusion

Situation in law and in practice in Denmark. Prospects for acceptance.

- *Ministry of Social Affairs, Housing, and Senior Citizens and Ministry of Children and Education*

Comments in the light of the Committee's conclusions and decisions

- *Giuseppe Palmisano, former President of the European Committee of Social Rights (TBC)*

Discussion

14.35 –15.00 Article 31 The right to housing

§§ 1 to 3

Situation in law and in practice in Denmark. Prospects for acceptance.

Ministry of Social Affairs, Housing, and Senior Citizens Comments in the light of the Committee's conclusions and decisions

– *Miriam Kullmann, member of the European Committee of Social Rights* Discussion

15.00 –15.50 The collective complaints procedure explained

- *Giuseppe Palmisano, former President of the European Committee of Social Rights*
- *Henrik Kristensen, Head of Collective Complaints Division, Department of Social Rights Department*
- *Ministry of Employment: the Danish position and prospects for ratification*

Discussion

15.50 –16.00 Conclusions and follow-up of the meeting:

- *Karin Møhl LARSEN, member of the European Committee of Social Rights*
- *Ms. Loreta Vioiu, Programme Manager, Department of Social Rights*
- *Ms. Vibe Westh, Deputy Permanent Secretary, Ministry of Employment*

16.00–16.45 **Bilateral meeting with Mr. Jonas Bering Liisberg, Director of European Affairs and the Arctic in the Ministry of Foreign Affairs**

Venue: Ministry of Employment

17.00 –18.00 **Bilateral meeting with the members of the Danish Parliament delegation to PACE,** *Christiansborg – Grønlandsværelset/The Greenlandic Room*

- Alexander Ryle, Member of the Folketing, Liberal Alliance, Vice-Chair of the Danish Delegation to PACE
- Camilla Fabricius, Member of the Folketing, The Social Democratic Party,
- Søren Søndergaard, Member of the Folketing, The Red-Green Alliance

DAY 2: 10 November 2023

Awareness raising/Capacity Building NHRI, NGOs and Trade Unions
8.45–12.00
Venue: Ministry of Employment
Holmens Kanal 20 | 1060 Copenhagen
Working languages: English

8.45 **Arrival of the CoE Delegation at the Ministry of Employment**

9.00–12.00 **Bilateral meeting with social partners,** *Ministry of Employment, Holmens Kanal 20 | 1060 Copenhagen*

Social partners
The Confederation of Danish Employers (DA)
Danish Trade Union Confederation (FH)
Local Government Denmark (KL)
Danish Employee and Competence Agency (MEDST)
Danish Regions (DR)
The Danish Confederation of Professional Associations (AC)

12.30 -15.00

Venue: Danish Institute for Human Rights

Wilders Plads 8K,1403 Copenhagen K
Working languages: English

12.30–14.00 **Meeting with the Director and staff of the Danish Institute for Human Rights**

- Brief presentation of the European Social Charter system, Reporting procedure, Collective complaints procedure, Non-accepted provisions procedure
- Denmark and the European Social Charter
- How NHHRI can engage with the Charter
- The Institute's current work with social rights in general and the Charter in particular

14.00 – 15.00 **Meeting with civil society organisations**

- Presentation of the European Social Charter system, Reporting procedure, Collective complaints procedure, Non-accepted provisions procedure
- Denmark and the European Social Charter
- How NGOs can engage with the Charter

Selected provisions of the Charter:

Article 7 The right of children and young persons to protection
Article 20 The right to equal opportunities
Article 23 The right of elderly persons to social protection
Article 30 The right to protection against poverty and social exclusion
Article 31 The right to housing

Civil society organisations:

1. **Ældresagen (DaneAge Association)**

Dorthe Wille, Deputy director
dw@aeldresagen.dk

2. **Danske Handicaporganisationer (Disabled people's organisations Denmark)**

Katrine Mandrup Tang, Executive director
kmt@handicap.dk

3. **Børns Vilkår (civil society organisation for children)**

Helle Tilburg Johnsen, Deputy director
htj@bornsvilkar.dk

4. **Kvinderådet (The Women's Council Denmark)**

Anna Berg, Executive director
anna.berg@kvinderaad.dk

5. **SAND (civil society organisation for homeless people)**

Ask Svejstrup, Head of Secretary
Mail: ask@sandudvalg.dk

6. **Stenbroens jurister (Legal aid for homeless people)**

Maja Løvbjerg Hansen, Executive director
maja@stenbroensjurister.dk

Council of Europe Delegation

Ms. Karin Møhl LARSEN, member of the European Committee of Social Rights
Ms. Miriam KULLMANN, member of the European Committee of Social Rights
Prof. Giuseppe PALMISANO, former President of the European Committee of Social Rights
Mr. Henrik KRISTENSEN, Deputy Executive Secretary of the European Committee of Social Rights, Deputy Head of the Department of Social Rights, Council of Europe
Ms. Loreta VIOIU, Programme Manager, Department of Social Rights, Council of Europe
Ms. Catherine GHERIBI, Senior Assistant, Department of Social Rights, Council of Europe

APPENDIX II

— Denmark and the European Social Charter —

Signatures, ratifications and accepted provisions

Denmark ratified the European Social Charter on 03/03/1965.

It ratified the Additional Protocol on 27/08/1996. It has accepted 45 of the 72 paragraphs of the Charter and all 4 Articles of the Protocol.

Denmark has signed, but not yet ratified the revised Charter and the Additional Protocol providing for a system of collective complaints.

The Charter in domestic law

Statutory ad hoc incorporation by specific implementing legislation.

Table of Accepted Provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	3.1	3.2	3.3
4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3	6.4	7.1	7.2
7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1	8.2	8.3	8.4
9	10.1	10.2	10.3	10.4	11.1	11.2	11.3	12.1	12.2	12.3	12.4
13.1	13.2	13.3	13.4	14.1	14.2	15.1	15.2	16	17	18.1	18.2
18.3	18.4	19.1	19.2	19.3	19.4	19.5	19.6	19.7	19.8	19.9	19.10
AP1	AP2	AP3	AP4	AP=Additional Protocol				Grey = Accepted provisions			

Monitoring the implementation of the European Social Charter [950]

Reporting system [951]

Reports submitted by Denmark

Between 1968 and 2024, Denmark submitted 43 reports on the application of the 1961 Charter.

The 42nd report, which was submitted on 22/12/2022, concerns the accepted provisions relating to thematic group 4 "Children, families and migrants" (Articles 7, 8, 16, 17 and 19).

Conclusions with respect to these provisions have been published in March 2024.

On 21 December 2023, an ad hoc report on the cost-of-living crisis was submitted by Denmark[952].

[950] The European Committee of Social Rights ("the Committee") monitors compliance with the Charter under two procedures, the reporting system and the collective complaints procedure, according to Rule 2 of the Committee's rules: « 1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure ».
Further information on the procedures may be found on the HUDOC database and in the Digest of the case law of the Committee.

[951] Detailed information on the Reporting System is available on the relevant webpage. The reports submitted by States Parties may be consulted in the relevant section.

[952] In accordance with the decision of the Ministers' Deputies adopted on 27 September 2022 concerning the new system for the presentation of reports under the European Social Charter, the European Committee of Social Rights and the Governmental Committee have decided to request an ad hoc report on the cost-of-living crisis to all State parties.

Situations of non-conformity [953]

Thematic Group 1 "Employment, training and equal opportunities" - Conclusions XXII-1 (2020)

► Article 10§4 - Right to vocational training - Encouragement for the full utilisation of available facilities
Non-EEA nationals are subject to a length of residence requirement of two years before being eligible receiving financial support for education and training.

► Article 1 of the 1988 Additional Protocol - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex
The obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

Thematic Group 2 "Health, social security and social protection" - Conclusions XXII-2 (2021)

► Article 12§4 - Right to social security - Social security of persons moving between states
The ten-year residence requirement imposed on nationals of States Parties not covered by EU regulations or bound by bilateral agreement with Denmark for entitlement to an early retirement pension for persons with disabilities or to ordinary old-age pension is excessive.

► Article 13§1 – Right to social and medical assistance - Adequate assistance for every person in need
- The levels of social assistance (kontanthjælp) paid to persons under 30 years of age and of integration allowance paid to single persons are not adequate;
- Nationals of States Parties can have their residence permit withdrawn on the sole ground of being in receipt of social assistance for more than six months.

► Article 4 of the 1988 Additional Protocol - Right of the elderly to social protection
There is no legislation prohibiting discrimination on grounds of age outside of employment.

Thematic Group 3 "Labour rights" - Conclusions XXII-3 (2022)[954] and XXI-3 (2018)

► Article 2§2 - Right to just conditions of work – Public holidays with pay
It has not been established that workers receive a sufficiently increased salary for work on public holidays.

► Article 5 - Right to organise
The legislation on the International Shipping Register restricts the right of trade unions to bargain collectively on behalf of all their members.

► Article 6§2 - Right to bargain collectively – Negotiation procedures
The right to collective bargaining in respect of non-resident seafarers engaged on vessels entered in the International Shipping Register is unduly restricted.

► Article 6§4 - Right to bargain collectively - Collective action
- Civil servants employed under the Civil Service Act denied the right to strike;
- The workers who are not members of a trade union that has called a strike are prevented from participating in the strike unless they join the relevant trade union, and they do not enjoy the same protection as the trade union members if they participate in a strike.

[953] Further information on the situations of non-conformity is available on the HUDOC database.
[954] Denmark submitted its report too late for examination. However, the Committee decided to examine Denmark's report relating to Articles 5 and 6§2 (Conclusions XXII-3 (2022)).

Thematic Group 4 “Children, families, migrants” - Conclusions XXII-4 (2023)

► Article 16 – Right of the family to social, legal and economic protection

- The length of residence requirement for entitlement to family allowance (børne- og ungeydelsen) is excessive;
- The length of residence requirement for nationals of certain States Parties (non-EU/EEA) lawfully resident in the country to be entitled to child allowance (børnetilskud) is excessive.

► Article 17 – Right of mothers and children to social and economic protection

- Bone testing is used to assess the age of children in irregular migration situation;
- The length of pre-trial detention of children is excessive;
- Children can be placed in solitary confinement for up to four weeks.

The Committee has been unable to assess compliance with the following provisions:

Thematic Group 1 “Employment, training and equal opportunities”

► Article 1§4 - Conclusions XXII-1 (2020)

► Article 15§1 - Conclusions XXII-1 (2020)

Thematic Group 2 “Health, social security and social protection”

► Article 3§2 - Conclusions XXII-2 (2021)
► Article 14§2 - Conclusions XXII-2 (2021)

Thematic Group 3 “Labour rights”

► Article 4§1 - Conclusions XXI-3 (2018)
► Article 4§3 - Conclusions XXI-3 (2018)

Thematic Group 4 “Children, families, migrants”

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II. Examples of progress achieved in the implementation of rights under the Charter (non-exhaustive list)

Thematic Group 1 "Employment, training and equal opportunities"

► Law No. 1385 of 21 December 2005 on equal opportunities removed the upper limit to compensation in employment discrimination cases.

► Sections 198 and 199 of the Criminal Code which provided for criminal sanctions to be applied in cases of deliberate idleness or lack of means of subsistence were repealed (Act No. 141/1999).

► Prohibition of both direct and indirect discrimination in the labour market with regard to race, colour, religion, political opinion, sexual orientation and national, social or ethnic origin (1996 Act on prohibition against discrimination in the labour market).

Thematic Group 2 "Health, social security and social protection"

► Act No. 356 of 9 April 2013 amended the Working Environment Act. The amendment pinpoints that the Act also deals with the psychological working environment.

► Since January 2012 inspections by the WEA are risk-based, and all enterprises with two or more full-time employees (FRE) will be inspected at least once before the end of 2019.

► A number of measures were introduced in favour of persons who had exhausted their right to unemployment benefits, such as a special education allowance (Act No. 1374 of 23 December 2012, Act No. 790 of 28 June 2013) or temporary labour-market benefits (Act No. 1610 of 26 December 2013, Act No. 174 of 24 February 2015). Furthermore, measures were taken to maintain unemployment benefits during sickness, for the first 14 days (Act No. 720 of 25 June 2014). Additional measures in favour of unemployed people were taken in the framework of the Employment reform 2014 (Act No. 1486 of 23 December 2014).

►In 2019, the executive order on carcinogens and mutagens was amended to implement Directive (EU) 2017/2398 of the European Parliament and of the Council of 12 December 2017 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work. A national provision regarding prohibition of recirculation on building sites of local exhaust air from work processes was amended to allow for recirculation as long as the air is effectively cleaned.

Thematic Group 3 "Labour rights"

►The legislation relating to annual holiday with pay was amended in 2012 so that to allow the workers to interrupt their holidays in case of sickness or accident during their annual leave. The days not taken can thus be postponed, after a waiting period of up to five days per holiday year and upon presentation of medical documentation of the illness (Section 13, Subsections 3-6 of the Holiday Act, entered into force on 1 May 2012).

► Progress has been made concerning the new strategy relating to the working environment up to 2020 aimed at reducing the number of serious accidents, the number of employees who are psychologically overloaded and the number of employees who experience musculoskeletal disorders. An expert committee on how to enhance the undertaken efforts has been established.

Thematic Group 4 "Children, families, migrants"

► The Children Act No. 460/2001 introduced new paternity rules and abolished the distinction between children born out of wedlock and legitimate children.

APPENDIX III

High-Level Conference on the European Social Charter
"a step by member States to take further commitments under the Charter"
3-4 July 2024, Vilnius, Lithuania

VILNIUS DECLARATION

1. In the Reykjavik Declaration (May 2023), the Heads of State and Government of the Council of Europe confirmed that "[s]ocial justice is crucial for democratic stability and security" and "reaffirm[ed their] full commitment to the protection and implementation of social rights as guaranteed by the European Social Charter system". They proposed the holding of a high-level conference on the European Social Charter (ETS No. 35, (revised) ETS No. 163, "the Charter") "as a step to take further commitments under the Charter where possible".

2. At the 133rd Ministerial Session on 17 May 2024, the Committee of Ministers reiterated that social justice and the Council of Europe's action on social rights play a crucial role for democratic stability and security. The Ministers restated their commitment to the European Social Charter system and, in their decisions, underlined the importance of the Charter and its monitoring procedures, and welcomed the organisation of a high-level conference.

3. Following the principles set out in the Vienna Declaration and Programme of Action (adopted in 1993 at the World Conference on Human Rights), all "human rights are universal, indivisible, interdependent and interrelated". These rights include social rights, such as rights related to work, education, housing, social protection, health and well-being, and the human rights aspects of the environment. Combating inequality and social exclusion is vital for all, especially for disadvantaged individuals. It is also crucial for the implementation of the Sustainable Development Goals as defined by the United Nations 2030 Agenda for Sustainable Development.

4. The Council of Europe was established in the belief "that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation". Social progress was enshrined in the Statute of the Council of Europe (ETS No. 1) as a cornerstone of lasting peace. The Russian Federation's ongoing war of aggression against Ukraine has had both immediate and lasting fallout as regards the enjoyment of human rights, including social rights for Ukrainians and all persons affected, and, very significantly, for women and children. The repercussions were and continue to be felt across Europe and throughout the world, including on the global economy and trade, particularly with increases in the cost of living and worsening food insecurity.

5. Social justice and the respect for, and the protection and implementation of social rights, as guaranteed in particular by the European Social Charter system, are crucial for promoting democratic security and stability. It is also very important to respond to new or emerging challenges

and avoid the risk of further erosion of social rights protection and increasing inequalities, in order to maintain social cohesion in our societies.

6. Through its monitoring, reporting and collective complaints mechanisms, the Charter provides effective governance inputs, through both the European Committee of Social Rights and the Governmental Committee of the European Social Charter and European Code of Social Security ("the Governmental Committee"), in the pursuit of social justice and the protection of social rights.
7. On the occasion of this High-Level Conference, which coincides with the 25th anniversary of the entry into force of the revised European Social Charter and the 75th anniversary of the Council of Europe, the representatives of Council of Europe member States:

a. underline the importance of having a robust and responsive social rights framework across Europe, underpinned in particular by relevant treaty law, including the European Social Charter system. It is the collective duty of member States to promote respect for, and the continuing development of, social rights, both as human rights and also as vectors of economic growth, social progress and social cohesion, peace, security and stability;

b. affirm that military aggression and breaches of peace are incompatible with States' human rights obligations in general, and, in particular, with their social rights obligations; in this context, welcome the solidarity shown towards the people of Ukraine and the social protection offered by Council of Europe member States to those who are temporarily displaced;

c. acknowledge the possibility offered by the Charter for States Parties to increase progressively their commitments aimed at respecting, protecting and implementing social rights, a process that can and should be further strengthened through constructive and enhanced dialogue between the competent national authorities and the organs of the Charter, together with social partners;

d. welcome the commitment of member States of the Council of Europe to promote social justice and, in particular, the efforts made by member States to accept a high level of commitment to social rights, and the effective action taken by the States Parties to the European Social Charter to address the findings and conclusions of the European Committee of Social Rights when necessary;

e. recall that the Council of Europe Development Bank, in line with its unique social mandate, contributes to strengthening social cohesion through projects with social value in its member countries;

f. welcome the decisions adopted by the Council of Europe Committee of Ministers to improve the implementation of the Charter system and its monitoring arrangements. This includes an invitation to the European Committee of Social Rights to apply, where possible, the existing Charter provisions to new and emerging social policy challenges and to strengthen the role of the Governmental Committee in respect of follow-up and reflection;

g. acknowledge the crucial role of national executives and legislatures in strengthening the protection of social rights through legislative action, in particular the part parliaments play in the ratification process of international treaties, and the acceptance of additional commitments under the Charter.

8. Consequently, the representatives of Council of Europe member States:

a. commit to respect, protect and implement social rights in general and, for the States Parties to the Charter, to pay continued attention to the challenges and opportunities to implement the Charter's requirements and, to this end, encourage States Parties to make full use of all available possibilities for enhanced dialogue between the organs of the Charter, States Parties and social partners;

b. encourage member States to consider ratifying the revised European Social Charter (1996) in an effort, alongside the policy approaches of member States, to support the Council of Europe's stated aim of facilitating economic and social progress;

c. propose to keep under review the possibilities for acceptance of additional commitments under the Charter, including the collective complaints procedure;

d. invite the Committee of Ministers of the Council of Europe to:

i. enable further discussions with national as well as competent local and regional authorities, and social partners, in order to promote a rights-based approach to social policy and the sharing of knowledge and good practice in responding to persistent and emerging common problems and challenges. The following areas might be covered:

– inequalities, low incomes and social exclusion, housing and demographic change;

– any form of discrimination having an impact on the full enjoyment of social rights;

– the social rights dimension related to the Reykjavik Declaration commitment "to [strengthen the] work on the human rights aspects of the environment";

– persistent and emerging challenges in the area of work, with the necessary attention being paid to freedom of association and collective bargaining, new forms of employment, the transition to a green economy, digitalisation, including the advent of artificial intelligence, technological change, work-life balance and, very significantly, the questions of participation and dignity (such as the protection against all forms of harassment, including sexual harassment) in the workplace;

ii. give increased priority to co-operation activities in the field of social rights with a view to improving the implementation of the Charter in the light of the monitoring outcomes of the European Committee of Social Rights and related Committee of Ministers recommendations. The "social rights" component of the Council of Europe Action Plan for Ukraine "Resilience, Recovery and Reconstruction" 2023-2026, is an inspiring example of such activities;

iii. ensure co-operation among Council of Europe entities and committees in the area of social rights, and continue to work together while exploring possibilities to increase co-operation with other international organisations as well as with the European Union in promoting social rights as guaranteed by the European Social Charter and its protocols;

iv. remain open to considering possible measures for further optimising the Charter system;

v. explore regularly the need to convene this High-Level Conference to address contemporary social policy challenges, also taking into account the expected outcomes.